

It is further ordered, That the motion of counsel supporting the complaint to remand this matter to the hearing examiner for the purpose of considering further evidence be, and it hereby is, denied, and

It is further ordered, That the complaint in this matter be, and it hereby is, dismissed.

IN THE MATTER OF

EASTMAN KODAK COMPANY

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

Docket C-2291. Complaint, Sept. 28, 1972—Decision, Sept. 28, 1972.

Consent order requiring a Rochester, New York, manufacturer of photographic equipment, among other things to cease misrepresenting used photographic equipment as new and failing to disclose the nature of such 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 Eastman Kodak Company, a corporation, hereinafter referred to as respondent, has 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. Definitions: (i) Photographic Equipment: Photographic Equipment shall mean still and motion picture cameras and projectors, including attachments thereto and accessories used therewith, which are designed for and customarily sold for general amateur photographic purposes; (ii) Used Photographic Equipment: Photographic Equipment shall be considered used when it has been sold to and delivered to an ultimate consumer; when it has been utilized for the purpose for which it was intended or when it has been utilized for general demonstration purposes.

PAR. 2. Eastman Kodak Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 343 State Street, Rochester, New York.

PAR. 3. Respondent is now, and for some time past has been, engaged in the business of manufacturing, advertising for sale, sale and dis-

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tribution of, as herein defined, photographic equipment to retailers and others for resale to the public.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, its products to be shipped from its place of business in the State of New York to purchasers thereof located in the various other States of the United States and the District of Columbia. Respondent, therefore, maintains and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In connection with its business as aforesaid, respondent provides and makes available various programs and services including but not limited to repair, refurbishment and repackaging services. By and through such programs and services, respondent has caused the repair, inspection, refurbishment and/or repackaging of certain of its photographic equipment that has been used as that term is herein defined.

PAR. 6. In the course and conduct of its business, as aforesaid, respondent caused used photographic equipment which was returned to respondent for replacement or credit to be returned to respondent's inventory, where said used photographic equipment was intermingled with other photographic equipment returned to respondent's inventory which had not been used. In intermingling respondent's photographic equipment as aforesaid, said used photographic equipment could not thereafter accurately be identified or discerned. As a consequence thereof, used photographic equipment could not be distinguished or ascertained from new photographic equipment that had been returned to respondent.

PAR. 7. Certain quantities of photographic equipment from the aforesaid inventory were thereafter refurbished and/or repackaged. A quantity of the aforesaid refurbished and/or repackaged photographic equipment were thereafter offered for sale, sold or distributed as new without any disclosure that such equipment has been used or may have been used.

PAR. 8. The acts and practices of respondent as alleged in Paragraphs Six and Seven herein, including respondent's failure to disclose the material fact that photographic equipment from such inventory which had been repaired, refurbished and/or repackaged was used or may have been used has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such photographic equipment was new and into the purchase of such photographic equipment by reason of such erroneous and mistaken belief.

Therefore, the acts and practices of respondent including respondent's failure to disclose material facts, as alleged herein, were and are unfair and are false, misleading, and deceptive.

PAR. 9. In the further course and conduct of its business as aforesaid, respondent has in certain instances caused used photographic equipment which respondent had reason to believe was used to be refurbished and/or repackaged and inspected at the behest of certain of its customers which resell photographic equipment at wholesale and/or retail so that said photographic equipment has the appearance of new photographic equipment and then returned to said customers.

Respondent thereby has furnished to such customers the means and instrumentalities by and through which such customers can deceive members of the purchasing public into the erroneous and mistaken belief that said used photographic equipment is new.

Therefore, the acts and practices of respondent as set forth hereinabove were and are unfair and are false, misleading and deceptive.

PAR. 10. By and through the use of the aforesaid acts and practices in commerce, respondent placed in the hands of certain of its customers which resell photographic equipment at wholesale and/or retail the means and instrumentalities by and through which such customers may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 11. The aforesaid acts and practices of respondent as herein alleged were and have been all to the prejudice and injury of the public and of respondent's competitors and constituted 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 hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection (regional office or bureau) proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with 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 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 Eastman Kodak Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 343 State Street, Rochester, New York.

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

In this order, the following definitions shall be applicable:

- (i) Photographic equipment: Photographic equipment shall mean still and motion picture cameras and projectors, including attachments thereto, which are designed for and customarily sold for general amateur photographic purposes.

- (ii) Used photographic equipment: Photographic equipment shall be considered used when it has been sold to and delivered to an ultimate consumer unless respondent can establish that the ultimate consumer has not used the product for the purposes for which it was intended or when the photographic equipment has been utilized for general demonstration purposes.

It is ordered, That respondent Eastman Kodak Company, a corporation, and its officers, successors or assigns and respondent's agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of photographic equipment in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing, clearly and conspicuously to disclose, in connection with the sale of used photographic equipment, in all advertising, sales, promotional literature and invoices concerning such photographic equipment, on the container in which the photographic equipment is packaged and on the photographic equipment with

sufficient permanency as likely to remain thereon until sale to the ultimate consumer, the fact that such product has been previously used, as is defined above.

2. Representing, directly or by implication, that used photographic equipment distributed by or on behalf of respondent is new or misrepresenting in any manner the nature, extent or degree of use of any photographic equipment offered for sale, sold or distributed by or on behalf of respondent.

3. Failing to maintain a system for handling used photographic equipment that is returned to the respondent which is so designed that photographic equipment which has been used is sufficiently identified to assure ultimate disposition in accordance with the terms of this order.

4. Supplying new packaging material for photographic equipment manufactured by the respondent to Independent Warranty shops or other non-affiliated entities which customarily do repair or service work on photographic equipment manufactured by respondent, except if such repair or service facility states in writing that such packaging material is intended for use with consumer-owned photographic equipment.

5. Supplying new packaging material for photographic equipment manufactured by the respondent to customers who resell such equipment at wholesale and/or retail, except for packaging material customarily shipped for display or replacement purposes, without receiving from the customer a statement in writing indicating that the requested packaging material is not to be utilized with used photographic equipment as that term is herein defined.

It is further ordered, That:

(a) As a condition precedent to repairing, refurbishing, repackaging or replacing any photographic equipment returned to respondent, respondent shall require any person, firm or corporation other than an ultimate consumer who returns such product to provide in writing a statement which will indicate whether or not the returned photographic equipment is a used product as that term is herein defined;

(b) Respondent shall maintain copies of statements received under the provisions of the immediately preceding subparagraph and Paragraphs 4 and 5 for a period of at least three (3) years and respondent shall maintain records sufficient to show compliance with Paragraph 3 *supra* for a period of three (3) years.

(c) Irrespective of the information received pursuant to sub-

paragraph (a) above, if the respondent has reason to believe from a physical inspection of the photographic equipment or from documentation accompanying the returned product that it has been used as that term is herein defined, it shall be treated as used photographic equipment pursuant to Paragraphs 1, 3, 4 and 5 above.

It is further ordered, That respondent herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of 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 respective corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondent 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.

It is further ordered, That respondent shall deliver, by first class mail, postage prepaid, a copy of this order to each of its customers who resell photographic equipment at wholesale and/or retail.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

IN THE MATTER OF

KOWA AMERICAN CORPORATION, ET AL.