

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

*Docket C-2595. Complaint, Oct. 8, 1974 - Decision, Oct. 8, 1974. **

Consent order requiring a New York City advertising agency, among other things to cease using deceptive demonstrations and making unsubstantiated claims concerning structural strength, quietness or performance of motor vehicles.

Appearances

For the Commission: *William S. Busker* and *Thomas J. Donegan*.
For the respondent: *Hugh P. Connell*, N.Y., N.Y.

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 J. Walter Thompson Company, a corporation, hereinafter referred to as respondent, has violated

*Petition for review was filed January 15, 1975, C.A. 6th.

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 the charges in that respect as follows:

PARAGRAPH 1. For purposes of this complaint, "commerce" means commerce as defined in the Federal Trade Commission Act.

PAR. 2. Respondent J. Walter Thompson Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and place of business located at 420 Lexington Avenue, New York, N. Y.

PAR. 3. Respondent J. Walter Thompson Company is now and for some time last past has been engaged in the advertising and promotion of certain motor vehicles, including but not limited to those models of automobiles designated by Ford Division, Ford Motor Company as the "Ford LTD" and the "Ford Galaxie."

PAR. 4. In the course and conduct of its aforesaid business, respondent J. Walter Thompson Company causes the said advertising materials to be transported from its places of business located in various States of the United States to various media located in various other States of the United States and in the District of Columbia. Respondent J. Walter Thompson Company maintains, and at all times mentioned herein has maintained, a substantial course of trade in said advertising in commerce. The volume of business in such commerce has been and is substantial.

PAR. 5. In the course and conduct of its said business, respondent J. Walter Thompson Company has disseminated and caused the dissemination of advertisements concerning the aforementioned Ford LTD and Ford Galaxie automobiles in commerce by means of advertisements printed in magazines and newspapers and advertisements transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said Ford LTD and Ford Galaxie automobiles.

PAR. 6. Among the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are those contained within the following sixty-second television advertisement entitled "Ford Lift," identified by the symbol FMFD 1036:

The commercial opens with a beauty shot of the 1971 Ford LTD. The announcer states, "The 1971 Ford LTD. One of the quietest Fords we've ever built. But to build a quiet car, you've got to build it strong." Four workmen apply blowtorches to the front doors of the car and rip off the

doors, revealing the steel guard rails. The announcer explains, "For example, we put strong steel Guard Rails behind the doors. Like highway guard rails. Just how strong are they? Watch. We're going to lift the entire car* * *more than two tons* * *by the Guard Rails alone. Let's go." The camera pulls back showing a Ford guard rail framed by a highway guard rail. The workmen then attach steel chains to either end of the Ford guard rails, and the car is lifted vertically by a crane. The workmen watch with awe and admiration. The announcer continues, "Steel Guard Rails. They're strong and durable* * *Like the rest of the car. Like our new body frame design. And our rugged suspension system. Take a quiet break in the '71 LTD or the new Galaxie. They're built strong to last longer." While the announcer is speaking, the LTD is pictured in the background suspended in the air by the crane, with a beauty shot of a 1971 Galaxie in the foreground. The commercial ends with the statement that "Ford gives you better ideas."

PAR. 7. Through the use of the advertisement set forth in Paragraph Six, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, without qualification, that the steel guard rails in the side doors of the Ford LTD and Ford Galaxie automobiles are as strong as a typical highway guard rail.

PAR. 8. In truth and in fact, the steel guard rails in the side doors of the Ford LTD and Ford Galaxie automobiles are not as strong as a typical highway guard rail in that, among other reasons, they do not have the same lateral strength as a typical highway guard rail.

Therefore, the aforesaid statements and representations and demonstrations used in conjunction therewith, as set forth in Paragraphs Six and Seven above were, and are, false, misleading and deceptive.

PAR. 9. Through the use of the demonstration in the advertisement set forth in Paragraph Six and others similar thereto not specifically set out herein, and the statements and representations used in connection therewith, respondent has represented directly or by implication that such demonstration is competent and reliable evidence which proves the lateral strength of the steel guard rails in the side doors of the Ford LTD and Ford Galaxie automobiles.

Therefore, the aforesaid demonstration, including the statements and representations used in connection therewith, as set forth in Paragraphs Six and Nine above, is false, misleading and deceptive.

PAR. 11. Typical also of the statements and representations in said advertisements disseminated as aforesaid, but not all inclusive thereof, are those contained within the following advertisements:

A. A full page print advertisement which is divided into two sections. The upper half begins with a banner headline proclaiming "At 60 mph a

1973 Ford rode quieter than an airborne glider." Below the headline are two photographs, side-by-side, one of the outside of a glider in flight, the other of a sound level meter registering 82 decibels. Beneath these photographs runs the caption: "July 27, 1972, Lake Elsinore, California: At 60 mph, the sound level inside the glider registers a quiet 82 decibels, in tests supervised by General Radio Company."

Below this caption are two more photographs placed side-by-side, one of a Ford LTD traveling at 60 mph, the other of a sound level meter registering 65 decibels. The caption under these photographs reads, "In the same test, the sound level meter inside the Ford LTD traveling at 60 mph registers an even quieter 65 decibels."

The lower half of the advertisement contains a large illustration of the Ford LTD as well as the following text: "Independently supervised tests proved it. The 1973 Ford LTD actually rode quieter than an engineless glider. You'd expect a car that runs that quiet to be well-made in every sense of the word. And so it is * * * Quiet is the sound of a well-made car."

B. A television commercial entitled Ford LTD "Glider." The advertisement opens with various shots of a Ford LTD automobile and a glider on a runway. The announcer states, "The new '73 Ford LTD. Can an LTD be as quiet as a glider? Nobody has to convince you how quiet a glider is. Airborne! With no engine at all! Can an LTD be as quiet as a glider? (At this point the picture shows a sound level meter in the LTD.) "To find out we put a sound level meter in a new LTD to measure its quiet. Quiet is the sound of a well-made car." (The glider is depicted in flight.) "We also put a meter in the glider. And let General Radio Company* * *real sticklers for accuracy* * *monitor." (The picture shows the sound meter in the glider.) "Let's test the noise level in the glider first. 82 decibels." (The words "82 decibels and 60 mph. Sound reading certified by General Radio Company" are superimposed on the picture. Then the picture shifts to a running shot of the LTD.) "Now the Ford LTD - Look at that meter at 60 mph - only 65 decibels." (The picture shows the interior of the car and the noise level meter. A split screen then shows both meters simultaneously. Then it returns to a running shot of the LTD.) The announcer concludes "Believe it or not this Ford LTD is quieter than the glider! Quiet is the sound of a well-made car. The new '73 Ford LTD. See it at your Ford Dealer's now." (The LTD is shown with the glider being pulled by an airplane.

PAR. 12. Through the use of the advertisements set forth in Paragraph Eleven, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that the sound

level inside an airborne glider is "quiet," and that a sound level meter reading of 82 decibels is "quiet."

PAR. 13. In truth and in fact, the sound level inside an airborne glider is not "quiet" and a sound level meter reading of 82 decibels is not "quiet." Respondent has thereby established a misleading standard of quietness to which it compared the quietness of the 1973 Ford LTD and which it offered as competent and reliable evidence to prove that the Ford LTD is a quiet car and a well-made car.

Therefore, the aforesaid statements and representations and demonstrations used in conjunction therewith, as set forth in Paragraphs Eleven and Twelve above were and are false, misleading and deceptive.

PAR. 14. Moreover, at the time the respondent made the representations as alleged in Paragraph Twelve, there existed no reasonable basis for making those representations.

PAR. 15. The making of representations as alleged in Paragraph Fourteen constituted, and now constitutes, unfair or deceptive acts or practices in commerce.

PAR. 16. Through the use of the demonstration set forth in Paragraph Eleven and others similar thereto not specifically set out herein, and the statements and representations used in connection therewith, respondent has represented, directly or by implication, that such demonstration is competent and reliable evidence which proves the a Ford LTD is a quiet car and a well-made car.

PAR. 17. In truth and in fact, the aforesaid demonstration, including the statements and representations used in connection therewith, is not competent and reliable evidence which proves that a Ford LTD is a quiet car and a well-made car.

Therefore, the aforesaid demonstration, including the statements and representations used in connection therewith, as set forth in Paragraphs Eleven, Twelve, and Sixteen above, is false, misleading and deceptive.

PAR. 18. The use by respondent of the aforesaid false, misleading, and deceptive statements, representations and demonstrations, including the misleading statements and representations made in connection with said demonstrations, has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of said Ford LTD and Ford Galaxie automobiles advertised by respondent J. Walter Thompson Company, by reason of said erroneous and mistaken belief.

PAR. 19. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce with corporations, firms, and individuals in the

advertising of motor vehicles of the same general kind and nature as those sold by Ford Motor Company.

PAR. 20. The aforesaid acts and practices of respondent, as herein alleged as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued its proposed complaint on February 6, 1973 charging the respondent named in the caption with violation of the Federal Trade Commission Act, and the respondent having further been furnished with a draft of a revised 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 the respondent with the same and additional violations 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 set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same, and the agreement containing consent order having been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. J. Walter Thompson Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its executive office and principal place of business located at 420 Lexington Avenue, New York, N. Y.

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

It is ordered, That respondent, J. Walter Thompson Company, its successors and assigns, its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or offering for sale or distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, of the Ford LTD automobile, the Ford Galaxie automobile or any other motor vehicle, do forthwith cease and desist from:

(a) Unfairly or deceptively advertising any such product by presenting evidence, including tests, experiments, or demonstrations, or the results thereof, that appears or purports to be evidence of the structural strength, quietness or performance of such product, that is material to inducing the sale of such product, but which is not competent or reliable evidence to prove such fact or product feature.

(b) Making any statements or representations, directly or by implication, concerning the structural strength, quietness or performance of the said product or any part thereof, unless there exists a reasonable basis for such statements or representations, *Provided,* That such reasonable basis shall consist of competent and reliable scientific tests or other competent and reliable objective materials, including competent and reliable opinions of scientific, engineering or other experts who are qualified by professional training and experience to render competent judgments in such matters.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to its operating divisions involved in the advertising or promotion of the Ford LTD automobile, the Ford Galaxie automobile or any other motor vehicle marketed by the Ford Division, Ford Motor Company.

It is further ordered, That respondent 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 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 respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

Commissioner Thompson dissenting.

Complaint

IN THE MATTER OF

SHARP ELECTRONICS CORPORATION

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

Docket C-2574. Complaint, Oct. 9, 1974 — Decision, Oct. 9, 1974

Consent order requiring a Paramus, N.J., distributor of consumer and business electronic products, among other things to cease imposing territorial, customer and other anticompetitive restrictions on its dealers.

Appearances

For the Commission: *Gordon Youngwood.*

For the respondent: *Peter A. Dankin, Wonder, Murase, White & Briger, New York, N.Y.*

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 Sharp Electronics Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 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 Sharp Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent maintains its home office and principal place of business at Paramus, N. J.

PAR. 2. Respondent is a distributor of consumer and business electronic products. In the past three years Sharp has sold various consumer electronic products such as black and white, and color television receivers, radios, tape recorders, microwave ovens, and the like. Business electronic products sold by Sharp during this time have consisted exclusively of Sharp brand electronic desk calculators.

Respondent's electronic calculators and other electronic equipment are manufactured by its parent corporation, Sharp Corporation of Aben-Ku, Asaka, Japan.

Sales of electronic calculators by respondent are substantial. Respondent is one of the largest sellers of electronic calculators in the United States.