

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.

PAR. 3. In the course and conduct of its business of manufacturing and distributing electronic calculating machines, respondent ships such products from New Jersey, its principal place of business, to independent franchised dealers located in various other States throughout the United States who sell the products to consumers. There is now and has been for several years past, a constant, substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, hampered, restricted, and restrained by reason of the practices hereinafter alleged, respondent has been and is now in substantial competition in commerce with other firms engaged in the manufacture or distribution of electronic calculators.

PAR. 5. In the course and conduct of its business as above described, and beginning at least as early as 1968, respondent has engaged and is now engaged in certain acts and practices whose effect has been to foster, promote, maintain and support its policies of restricting dealer competition in the United States in the marketing, sale and distribution of electronic calculators.

Among these acts and practices, but not limited thereto, have been the following:

A. Directing, encouraging, threatening, warning, and/or otherwise prohibiting its dealers from selling Sharp electronic calculators outside of their allotted territories.

B. Imposing or attempting to impose limitations or restrictions, by threats, warnings, or other devices, as to the persons or classes of persons to whom its dealers may sell Sharp electronic calculators.

C. Requiring its dealers, without option, to agree to the establishment, for the period of time during the warranty, of a mandatory fixed schedule for the division of profit earned in the sale of an electronic calculator between the selling dealer and a dealer in whose territory the calculator is to be used and serviced with the effect of limiting, allocating and restricting the territory in which electronic calculators may be sold by its dealers.

PAR. 6. These aforesaid acts and practices as alleged, are prejudicial and injurious to the public; have a tendency to hinder, restrict, restrain and prevent competition and have actually hindered, restricted, restrained and prevented competition; and constitute unfair acts or practices and unfair methods of competition in commerce within the meaning and intent of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

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 have been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition 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 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 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 that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Sharp Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 10 Keystone Place, Paramus, N. J.

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

I

It is ordered, That respondent Sharp Electronics Corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, merchandising, offering for sale and sale or distribution of electronic calculators, in commerce, as "commerce" is defined in the

Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Imposing or attempting to impose any limitations or restrictions respecting the territories in which electronic calculators may be sold by its dealers.
2. Attempting to enter into, entering into, continuing, maintaining, or enforcing any contract, combination, understanding or agreement to limit, allocate, or restrict the territory in which electronic calculators may be sold by its dealers.
3. Imposing or attempting to impose any limitations or restrictions respecting any contract, combination, understanding or agreement to limit, allocate or restrict the person or class of persons to whom electronic calculators may be sold by its dealers.
4. Attempting to enter into, entering into, continuing, maintaining, or enforcing any contract, combination, understanding or agreement to limit, allocate or restrict the person or class of persons to whom electronic calculators may be sold by its dealers.
5. Requiring or attempting to require for a period of five years from the date of this order that its dealers without option, enter into any contract, combination, understanding or agreement establishing for the period of time during the warranty a mandatory fixed schedule for the division of any profit earned in the sale of an electronic calculator between the selling dealer and a dealer in whose territory the calculator is to be used and serviced.
6. Requiring or attempting to require for years subsequent to the period of five years from the date of this order that its dealers without option, enter into any contract, combination, understanding or agreement where such mandatory fixed schedule has the effect of limiting, allocating or restricting the territory in which electronic calculators may be sold by its dealers.

Provided, That nothing in this order shall prohibit respondent from:

- (a) Engaging in any activity specifically rendered lawful by subsequent legislation enacted by the Congress of the United States or any rules or regulations promulgated pursuant to such legislation.
- (b) Designating geographical areas within which a dealer may agree to devote his best efforts to the sale of electronic calculators (hereinafter "area of primary responsibility") as a condition of becoming a dealer or maintaining a dealership, provided that such dealers are told that said area is not exclusive and does not place a territorial restriction upon the sale of such equipment.

(c) Requiring or attempting to require as a condition of maintaining a dealership any dealer to undertake or cause others to undertake obligations of installation and warranty in connection with the use of any electronic calculators sold, leased or rented by such dealer or for which a dealer has accepted compensation for installation or warranty.

(d) Making available a program for use at the option of a dealer which provides, or contains provisions which provide, in all instances in which the selling dealer chooses not to undertake the obligations of installation or warranty, for a stated fixed schedule for the division of any profit between the selling dealer and a dealer in whose territory the calculator is to be used and serviced.

(e) Requiring, as a condition of maintaining a dealership, compliance with any program described in Paragraph (d) voluntarily accepted by such dealer.

II

It is further ordered, That respondent shall within sixty (60) days after service upon it of this order serve upon all of its franchised dealers a copy of this order along with a copy of the attached letter (Attachment A) on respondent's official company stationery and signed by the president of respondent.

III

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

IV

It is further ordered, That respondent notify the Federal Trade 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 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.

ATTACHMENT A
(Official Sharp Stationery)
(Date)

Dear _____:

The Federal Trade Commission has entered into a Consent Order with Sharp Electronics Corporation which, among other things, prohibits Sharp Electronics Corporation from imposing or attempting to impose any limitations or restrictions respecting the territories in which, or class of persons to whom dealers may sell electronic calculators. Dealers are permitted to sell outside the confines of their assigned territories and to sell to any person or class of persons to whom they wish.

The Order prohibits as well, for a period of five years, any mandatory fixed schedule for the division of profit in the sale of electronic calculators between the selling dealer and the dealer in whose territory the calculator is to be used and serviced. For the period of time beyond five years, the Order prohibits mandatory fixed schedules with the effect of limiting, allocating or restricting the territory in which electronic calculators may be sold by its dealers.

A copy of the Order is attached for your information.

Very truly yours,

President,
Sharp Electronics Corporation.

IN THE MATTER OF

HOLIDAY MAGIC, INC., ET AL.

ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE CLAYTON
ACT