

Complaint

63 F.T.C.

IN THE MATTER OF

A. C. NIELSEN COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-613. Complaint, Oct. 23, 1963—Decision, Oct. 23, 1963*

Consent order requiring the world's largest marketing and audience research organization—which in 1961 received over 90 percent of the gross billings of \$4,532,000 derived from the national radio and television audience measurement market—to cease its efforts to monopolize and restrain trade in the reports and ratings measuring such audiences, including restrictive agreements with competitors, acquiring competitors' customers and trade names, interfering with the development and use of competing electronic and mechanical measuring devices through threats of patent proceedings, harassment, coercion and otherwise, and sabotaging competitors' financing of such efforts.

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 A. C. Nielsen Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A. Sec. 45) 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 A. C. Nielsen Company (hereinafter referred to as Nielsen) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2101 Howard Street, Chicago 45, Illinois. It maintains four (4) operating subdivisions including Retail Index Service, Coupon Clearing House, Special Research Department and Broadcast. Annual sales are in excess of \$27,000,000. Respondent through its Broadcast subdivision is now and for many years last past has been, engaged in the production and sale of market research and audience research analyses, ratings and reports. Respondent is, by far, the largest organization in the world in both marketing research and audience research.

PAR. 2. The audience research operations of respondent consist of two services: (1) The Nielsen Radio Index (NRI) and the Nielsen Television Index (NTI) which measure the audience for national (network) programs on radio and television; and (2) various local services to measure local radio and television audiences. National

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radio and television audience measurement services differ materially from local radio and television audience measurement services in terms of price, types of customers, sampling methods, what is measured, data collected and types of reports produced; these services are non-interchangeable. For the purpose of measuring national radio and television audiences, respondent employs, among other things, a patented electronic device known as an "Audimeter".

PAR. 3. The measurement of national audiences of network programs, which respondent has restrained and monopolized as hereinafter alleged, reflects and affects the listening and viewing habits of the 46 million homes in the United States with television sets and the 50 million homes in the United States with radios. Nielsen's reports and ratings of network programs significantly affect programming: they are an important factor in determining the way that an estimated \$805,000,000 is spent on network television advertising and \$47,000,000 on network radio advertising. Respondent's customers for its national radio and television audience measurement services include the principal broadcasting networks, advertising agencies, and advertisers.

PAR. 4. By means of the unlawful conduct hereinafter alleged, respondent has achieved a monopoly of the national radio and television audience measurement market. In 1961, the gross billings derived from that market were approximately \$4,532,000; Nielsen's share of this market was in excess of 90%.

PAR. 5. Respondent causes, and has caused, the aforesaid national radio and television audience measurement reports and ratings, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said reports in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is and has been substantial.

PAR. 6. In the course and conduct of its business in commerce, respondent has been and would now be, in active competition with other corporations, firms and individuals engaged in the production and sale of national radio and television audience measurement reports and ratings, except that respondent, by the acts and practices are herein alleged, has foreclosed virtually all competition in the sale of such reports and ratings.

PAR. 7. Since 1946 and continuing to the present time, respondent has engaged, and is now engaging in a program, the purpose or effect of which has been and is now to monopolize, attempt to monop-

olize and to restrain trade in the production and sale of reports and ratings measuring national radio and television audiences. As part of, pursuant to and in furtherance of the aforesaid program, respondent has entered into contracts and combinations in restraint of trade in both character and effect and has pursued and performed, and is now pursuing and performing, among other things, the following acts, policies and practices:

1. Entered into an agreement in 1950 with C. E. Hooper, Inc., then its principal competitor in the production and sale of national radio and television measurements, whereby it acquired all customers and tradenames used in connection with C. E. Hooper's production and sale of said measurements. As part of the aforesaid agreement C. E. Hooper agreed that it would not engage in the production and sale of national radio and television measurements for a substantial period of time.

2. Engrossed and aggregated and is now engrossing and aggregating patents and inventions of importance relating to the use of electronic and mechanical devices for measurement of national radio and television audiences with the effect of suppressing competition and restraining the use of any device designed to compete with the "Audimeter" and other Nielsen devices.

3. Systematically engaged in and threatened and is now systematically engaging in and threatening interferences, opposition, and other patent proceedings to harass and coerce and to discourage potential and actual competitors from developing and using electronic and mechanical devices for the purpose of measuring national radio and television audiences.

4. Disparaged and hindered and is now disparaging and hindering competitors' efforts to develop competitive electronic and mechanical devices for measuring national radio and television audiences and has attempted to impede and sabotage the financing of these competitive efforts.

PAR. 8. By reason of the aforesaid agreement with C. E. Hooper and the various other acts and practices hereinbefore alleged, respondent has:

1. Established and maintained and is now maintaining a monopoly in, and has unreasonably restrained and is now restraining, the production and sale of national radio and television audience measurement reports and ratings;

2. Eliminated and prevented and is now preventing its actual and potential competitors from engaging in the production and sale of national radio and television audience measurement reports and ratings;

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3. Fixed and maintained and is now maintaining arbitrary, artificial and non-competitive prices for national radio and television audience measurement reports and ratings;

4. Excluded and is now excluding other persons from the opportunity of engaging in the business of producing and selling national radio and television audience measurement reports and ratings;

5. Established and maintained and is now maintaining a monopoly of patents in the United States covering various electronic and mechanical devices for use in the measurement of national radio and television audiences;

6. Discouraged and impeded and is now discouraging and impeding the progress of science and the useful arts by using the patent laws of the United States for purposes inconsistent with their constitutional basis and for the purpose or with the effect of monopolizing or attempting to monopolize the production and sales of national radio and television audience measurement reports and ratings;

7. Deprived and is now depriving users and the public of the benefits of the competition that would exist in the national radio and television audience measurement market but for the unlawful acts and practices of respondent alleged herein.

PAR. 9. The acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, have a dangerous tendency unduly to hinder competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of, and in violation of, Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having 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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent, A. C. Nielsen Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2101 Howard Street, in the city of Chicago, State of Illinois.

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 A. C. Nielsen Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the production and sale of radio and television audience measurement reports and ratings, data or information relating thereto, in commerce, as "Commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Entering into, or continuing in effect, any contract, agreement, or understanding which operates to eliminate, lessen, suppress, or restrain a competitor or competitors, or which operates to cause or induce the withdrawal of any firm or individual from the production and sale of such reports and ratings.

2. For a period of ten (10) years from the date of service of this order upon respondent by the Federal Trade Commission, acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, ownership or control of, or financial interest in, the business, physical assets, or goodwill, or any part thereof, or any capital stock or securities of any other person engaged in the production and sale of such reports and ratings without prior approval of the Federal Trade Commission.

3. Hindering efforts of competitors to develop or use electronic or mechanical devices for measuring radio and television audiences by attempting in any way to impede or interfere with the financing of such competitive efforts.

It is further ordered, That respondent make available to any applicant who applies therefor, a nonexclusive royalty-free license extending for a period of four (4) years and thereafter for the remaining term of the patent, a nonexclusive license, on the basis of payment of reasonable and nondiscriminatory royalties, to make, use and vend any mechanical or electronic device for the measurement of radio and television audiences, under any, some or all patents and

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patent applications pertaining to such devices now owned or controlled by respondent, or which are issued or applied for within four (4) years from the date of service of this order upon respondent. Respondent is furthermore ordered, for a period of four (4) years from the date of service of this order upon it, to waive and relinquish all right to the collection of royalties from all outstanding licenses to make, use and vend any mechanical or electronic device for the measurement of radio and television audiences, under any, some or all patents and patent applications pertaining to such devices now owned or controlled by respondent. Respondent is furthermore ordered to cease and desist from making any disposition, whether by transfer or otherwise, of any of said patents which would deprive it of the power or authority to grant such licenses, unless it sells, transfers or assigns such patents, and requires, as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee thereof shall observe the requirements of this provision of this order and the purchaser, transferee or assignee shall file with the Commission, prior to the consummation of said transaction, an undertaking to be bound by this provision of this order.

It is further ordered. That the respondent 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.

IN THE MATTER OF

DYESS FURNITURE COMPANY, INC., ET AL.

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

Docket 8555. Complaint, Mar. 4, 1963—Decision, Oct. 24, 1963

Order requiring the corporate operator of a warehouse and a chain of four retail stores in Mobile and Selma, Ala., Biloxi, Miss., and Pensacola, Fla., and the four chainstores, to cease representing falsely in newspaper advertisements and other promotional material distributed to prospective customers that the furniture and other merchandise they sold had been purchased from railroad companies after being damaged in transit or classified as "salvage" for some other reason; and that the selling price of their goods was "70% less than the usual retail price in their trade areas.

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 Dyess Furniture

