

5. "Most Powerful Long Distance" Issue

The complaint charges that respondent has falsely represented that:

Its Model L14 radio set was the most powerful long-distance all-transistor portable available.

The aforementioned L14 radio, also known as the MOTOROLA RANGER 1000 radio, is a single-band transistor radio as distinguished from a "multi-band" or short wave transistor radio. (The previous section of this section also dealt with the L14 radio but on other issues.)

Respondent admits that it made the above-quoted representation but denies that it is false.

The only evidence presented by complaint counsel that the above-quoted representation was false is evidence to show that at the time the representation was made there were on the market "multi-band" or short wave radio sets with better abilities to get long distance reception than the L14 radio. In line with such evidence, complaint counsel contend that respondent's ads on the L14 radio are tantamount to representations that the L14 would outdo even a short wave portable radio in ability to get long distance stations.

Respondent, on the other hand, contends that no such meaning or interpretation can be properly drawn from its advertisements. It contends that its ads merely claim that the L14 radio had superior long distance ability over competing single-band transistor radios and that the ads do not represent, even impliedly, that the L14 could outstrip short wave radio sets in the matter of long distance reception.

Under these circumstances the texts of the various ads used by respondent to exploit its L14's ability to reach long distance or far away stations become pertinent. *Zenith Radio Corp., v. Federal Trade Commission, supra.*

As assembled by complaint counsel in their reply brief, respondent's various ads dealing with the L14's long distance ability read as follows:

- CX 9: 10 times more station-getting power
10 times more power to reject unwanted stations. Twice the audible volume
- CX 10C: 10 times more power to get stations with tuned RF stage
- CX 12: Most powerful long-distance all-transistor portable
10 TIMES MORE SENSITIVITY to get more stations with tuned RF stage
10 TIMES MORE SELECTIVITY to reject unwanted signals with 3-gang tuning condenser

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- CX 13: Powerful Long-Range Portable. With 10 times more power to get stations.
20% more power to reject unwanted stations. Twice the audible volume without distortion.
- CX 14: Most powerful long-distance all-transistor portable
10 TIMES MORE SENSITIVITY
TWICE THE AUDIBLE VOLUME
20% MORE SELECTIVITY
- CX 15: Most powerful long-distance all-transistor portable
* * * * *
50% more audible volume from new
audio circuit delivers power needed
to overcome outdoor noises, tone
quality for outstanding distortion-free sound

Although there is a good deal of bombast in the above advertisements, the examiner is unable to read into them any claim by respondents that the L14 radio was being compared with short wave radio sets in the matter of "powerful long distance" reception or any claim that the L14 was being featured as being able to outstrip a short wave radio in the matter of long distance reception. Certainly there is no direct representation to this effect.

If the representation is there, it is present only by implication. However, it is common knowledge that the average single-band radio owner holds the short wave radio, frequently advertised or called a transoceanic receiver, in awe for its capabilities for bringing in distant stations. The average radio user also knows that short wave radios sell at substantially higher prices than the single-band radio. The record shows that the L14 radio set here involved had a list price of \$75 and that the Zenith Royal 1000 short wave transistor radio to which it is being compared in the matter of long distance reception had a list price of \$250. The second short wave with which the L14 is being compared with respect to distance reception was the RCA 1-MBT-6. This had a list price of \$200. All the photographs of the L14 in respondent's advertisements show it to be a single-band radio; there is no attempt to deceive by showing, for example, a shadow multi-band radio at the side of the illustrated L14 radio set.

Although it is, of course, possible that, here and there, there might be a consumer who would be led to believe by the advertisements that representation was being made that the L14 would outdo a short wave receiver in matter of long distance reception, it is found that no significant portion of the consuming public would get such an impression. Even the uninformed radio user would no more expect a single-band radio to do as well in reaching long distance stations as a short wave receiving set than he would expect the fastest of

stock automobiles to equal or outdistance a racing car, no matter how much the "power" of the stock automobile might be stressed in an advertisement.

Since we have found that the ads in question do not represent that the L14 radio will surpass short wave receivers in ability to get far distant stations and since the only evidence adduced by complaint counsel in support of the charge of the complaint that the involved representation is false is evidence to show that certain short wave radio sets surpass the L14 in capacity to receive long distance stations, it is concluded that counsel supporting the complaint have failed to prove the charge of misrepresentation here under consideration.

Normally a conclusion such as the above would terminate the discussion of the issue. The examiner, however, recognizing the possibility that the Commission may disagree with his conclusion on appeal; deems it advisable to set forth certain additional findings of fact to the end that the Commission on appeal may have all facts required to dispose of this matter under any hypothesis.

The evidence shows that the ability of a radio to reach far distant stations is dependent upon two factors, to wit, its "power" and its "sensitivity". By written stipulation of the parties, "power" or "power output" (the two are interchangeable) is defined as the measurement of electrical force at work or the effect of the application of electrical energy. The parties have also stipulated that "sensitivity" is defined as the characteristic of a radio that determines the extent to which a radio is capable of receiving weak or distant signals. The "sensitivity" of a radio is also measurable. The components of a radio receiving set which have to do with "power output" are different than the components which have to do with its sensitivity.

From the parties' definition of the term "sensitivity" and from the record as a whole, it is found that the "sensitivity" characteristics of a radio plays the predominant role in the radio's ability to obtain long distance stations and that the "power output" aspects of a radio plays a minor or insignificant part in the ability of the radio to get far distant stations.

There are two sets of sensitivity measurements of the L14 radio in evidence. One ¹⁹ set consists of the measurements of two different L14 radios by Walter J. Miller, a radio engineer for Zenith. Miller tested the first of these sets in 1959 or about three years prior to

¹⁹ The second or other set of sensitivity measurements referred to is the set adduced by respondents in their defense of the issue here under consideration. This second set of sensitivity measurements are discussed on page 105 below.

the issuance of the complaint herein. The test was made in connection with his routine duties at Zenith and as part of Zenith's program to test not only its own products but also competing radios of other manufacturers. He tested the second L14 radio in 1962. The sensitivity measurements he got on the second L14 radio generally corroborated the sensitivity measurements he obtained in 1959 on the first L14 radio set. It is found that the sensitivity measurements made by Mr. Miller on the two L14 radios, one in 1959 and the other in 1962, are true and accurate and are accorded full credibility.

The record also contains sensitivity measurements of the Zenith Royal 1000 radio, the aforementioned Zenith multi-band or short wave radio. These measurements were made in 1957 by Zenith radio engineering personnel in the course of routine duty in accordance with Zenith policy to test competing brands of radios as well as their own products. Similarly the record contains sensitivity measurements on the aforementioned RCA 1-MBT-6, also a multi-band or short wave radio set,²⁰ made by RCA engineering personnel in routine testing procedure in 1958.

Based on a comparison of the sensitivity measurements of record for the above-described Zenith multi-band radio receiving set with the sensitivity measurements of record on the L14 radio as determined by Mr. Miller, it is found that the Zenith multi-band set enjoyed superior "sensitivity" ability to bring in long distance stations over that of the L14 radio. Similarly, based on a comparison of the sensitivity measurements of record for the mentioned RCA multi-band radio receiving set with the sensitivity measurements of record on the L14 radio as determined by Mr. Miller, it is found that the RCA multi-band set also enjoyed superior "sensitivity" ability to bring in long distance stations over that of the L14 radio.

The record also contains "power output" measurements for the L14 and the above-mentioned Zenith Royal 1000 and the RCA 1-MBT-6. The measurement of the "power output" of the L14 is shown on a document supplied by respondent to the Commission in 1960 in the course of the precomplaint investigation of this matter. That document is now in evidence as CX 101 A-C. (It should be noted that the same document does not reflect any "sensitivity" measurements for the L14 which, as shown above, is far more important than "power output" in the matter of bringing in long distance

²⁰ On page 64 of their proposed findings of fact, complaint counsel describe the RCA 1-MBT-6 as a "multi-band portable radio", but on page 32 of their reply brief, complaint counsel state "There is no evidence in the record establishing that the RCA 1-MBT-6 radio is a short wave set. The oral evidence conclusively shows that the mentioned RCA set is a short wave receiving set. See also CX 93 which shows the RCA set to be a seven-band receiving set. The Zenith Royal 1000 has eight bands.

stations.) The "power output" measurements of record for the Zenith Royal 1000 and the RCA 1-MBT-6 are the measurements made by the radio engineering personnel of Zenith and RCA, respectively, in routine tests performed several years prior to the issuance of the complaint. A comparison of the "power output" measurements of the L14 as reflected on the said CX 101 A-C with that of the Zenith Royal 1000 and the RCA 1-MBT-6 as shown from the laboratory test sheets of Zenith and RCA show that the latter have the superior "power output" measurements and would, therefore, have better ability to bring in long distance stations than the L14 radio insofar as "power output" affects such ability which, as shown, plays a minor part compared to the "sensitivity" of a radio. From this it is found that the Zenith and the RCA short wave radio sets have better capacity to obtain distant stations insofar as "power output" is concerned (as distinguished from "sensitivity" on which they are also superior) than the L14.

To counter the above evidence adduced by complaint counsel, respondent relies on certain sensitivity measurements²¹ it made in 1962 to show that the L14 radio had the "most powerful long distance" quality it attributed to the L14 in the advertisements shown above. In the month or two before the hearing herein started, respondent had its engineering personnel take the sensitivity measurements of six of its L14 radios and five competing single-band portable radios. The results of these tests are shown in RX 37. RX 37 shows that the average of the sensitivity of the tested six L14 radios was superior to the sensitivity of any of the tested five competing portables. Similarly a comparison of the mentioned average sensitivity of the tested six L14 radios with the sensitivity measurements made by the Zenith and RCA engineering personnel on the Zenith Royal 1000 and the RCA 1-MBT-6, above referred to, shows the L14 radio to have the superior sensitivity.

The examiner rejects the above favorable sensitivity measurements of the L14 radio adduced by respondent into the record as being without probative value for reasons similar to those shown above for the rejection of other *post-complaint tests* made in preparation for trial in connection with prior issues discussed above. As between measurements made routinely and without thought of use for purposes of hearing and measurements made just prior to hearing and for use as evidence, the examiner accepts the former and rejects the latter. This is the situation under the present issue as in previous issues discussed above.

²¹ This is the second set of sensitivity measurements of the L14 of record referred to earlier above.

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Finally it should be noted that no weight is being given to evidence adduced by complaint counsel showing that two competitive single-band transistor model radios manufactured by the Admiral Corporation have a superior "power output" to that of the L14 radio. This is because the record fails to show the "sensitivity" measurements for these two Admiral model radios. As shown above, the sensitivity measurements of a radio, as distinguished from its power output, plays the predominant role in the radio's ability to bring in long distance stations.

CONCLUSION

Bearing in mind that it has heretofore been found that respondent's representation that "Its Model L14 radio set was the most powerful long-distance all-transistor portable available" was not a representation that the L14 radio was more powerful than short wave radio sets in the matter of bringing in long distance stations and bearing in mind that it was also found above that there is no evidence true from both a "sensitivity" and "power output" point of view other than evidence adduced by complaint counsel to show that the above-described Zenith and RCA short wave radios surpass the L14 radio in ability to obtain long distance stations, the examiner now finds and concludes that complaint counsel have failed to meet the burden of proof required to show that respondent's representation that "Its Model L14 radio set was the most powerful long-distance all-transistor portable available" was false, misleading and deceptive.

6. "Tube Saving" Device Issue

The complaint charges that respondent has falsely represented that:

Its sentry system contained in certain of its receivers was a protective device that eliminated 3 out of 4 service calls, and tripled TV life expectancy.

Respondent admits that it made the above representation but denies that it is false or misleading.

The above-quoted charge of the complaint is based on an advertisement by respondent, also set forth in the complaint which reads as follows:

Golden Tube Sentry System * * * works automatically to protect every tube in the set against warm-up power surge * * * main cause of TV failure. It's engineered to eliminate 3 out of 4 service calls * * * triples TV life expectancy.

The above ad was published in a February 1959 edition of *Electrical Merchandising*. (CX 30 and Stip. of Facts, par. 23.)

