

Complaint

IN THE MATTER OF

TELEVISION SERVICE ASSOCIATION OF  
DELAWARE VALLEY ET AL.

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

*Docket 8623. Complaint, May 13, 1964—Decision, Feb. 19, 1965*

Order requiring a trade association of television and radio repairmen and its members, of Philadelphia, Pa., engaged in the repair service of television sets, radios, and other electronic devices, to cease entering into and carrying out any planned course of action to coerce, intimidate, or boycott wholesalers or distributors of electronic equipment or component parts who also sell such products at retail, to refrain from interfering with the practices in which such wholesalers conduct their business, and to cease using a policy to "black list" wholesalers or distributors who sell such products at retail and to "white list" wholesalers or distributors who refuse to sell such products at retail.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties hereinafter referred to as respondents have violated the provisions of Section 5 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Television Service Association of Delaware Valley, a corporation, sometimes hereinafter referred to as TSA of Delaware Valley, is a non-profit trade association, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and its principal place of business at 4710 Old York Road, Philadelphia, Pennsylvania. Respondent TSA of Delaware Valley was organized and is maintained ostensibly to promote the welfare and mutual interest of the radio-television and electronic industry. The membership of said respondent constitutes a class so numerous and changing as to make it impracticable to name individually each and every member as a respondent herein. Accordingly, the following members of respondent TSA of Delaware Valley are herein named as respondents in their individual capacities, as members of respondent TSA of Delaware Valley, as past or present officers, directors or in other official capacities of said corpo-

rate respondent, and as fairly representative of all members thereof, as a class, all of whom are made respondents herein :

Herman Shore, 1218 W. Girard Avenue, Philadelphia, Pennsylvania, served as director of respondent TSA of Delaware Valley from 1959 to 1960, as vice president from 1960 to 1961 and as president from 1961 to 1962.

Raymond Fink, 7819 Rugby Street, Philadelphia, Pennsylvania, served as recording secretary of respondent TSA of Delaware Valley from 1959 to 1960 and served as a director of said respondent from 1960 to 1961 and from 1961 to 1962.

PAR. 2. Meetings are held by members of respondent trade association for the purpose of transacting the business of the association. These meetings are held periodically, generally once a month, within the community wherein the trade association has its principal place of business.

PAR. 3. All or virtually all of the members of respondent trade association are individuals or corporate or other organizations engaged in the business, among others, of repairing and servicing electronic devices and equipment including those designed and employed for the reception of radio and television broadcast signals. In the course and conduct of the business of so repairing and servicing such devices and equipment, various supplies are required by members of respondent association including different component parts thereof such as radio and television tubes. Such component parts are sold and shipped by the manufacturers thereof to wholesalers or distributors in states other than the states of manufacture or other than the states where shipment originated. Those wholesalers or distributors in turn resell them to members of the corporate respondent and also to ultimate consumers. Some of the sales so made by such wholesalers or distributors are or have been made to members of respondent trade association, or to others who are non-members, but who are similarly engaged in repairing and servicing television, radio or electronic devices and equipment, or to ultimate consumers, with places of business or residences in States other than those wherein the places of business of such wholesalers and distributors are located.

PAR. 4. Respondent TSA of Delaware Valley for some years last past has published a monthly magazine called "TSA NEWS" which it has distributed to its members and to others in the radio, television and electronic industry both within the Commonwealth of Pennsylvania and in States other than the one wherein it or its members maintain their principal places of business. Members of respondent trade association, or some of them, in order to further carry out,

engage in, pursue or implement the acts, practices, methods of competition, combination, agreement, conspiracy, or planned common course of conduct, as hereinafter more particularly described and alleged to be unfair, in derogation of the public interest and in violation of law, have themselves traversed boundaries separating one state from another state or states, or have from points in one state or states employed channels of communication such as the United States mail or telephone lines extending to points in another state or states, or both. Respondent trade association and all of its members who are responsible for the acts and practices of said association, either actively participating and collaborating or tacitly acquiescing therein, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Members of respondent trade association and others similarly engaged have been, and are now, in competition with wholesalers or distributors from whom they purchase component parts for use in their business of repairing and servicing television, radio or electronic equipment or devices for the business of the ultimate consumer of such parts or devices except to the extent competition between them may have been prevented, eliminated, injured or impaired as a result of various unfair acts, practices or methods of competition engaged in, followed, pursued or adopted by or through the corporate respondent and by the members thereof as hereinafter more particularly alleged. Included among and illustrative of such acts, practices or methods of competition so engaged in, followed, pursued or adopted were the following:

At least as early as 1959, the impact of competition for the business of the ultimate consumer with wholesalers of television, radio and electronic devices and parts therefor became a matter of concern to members of respondent TSA of Delaware Valley. In March of that year said members, or some of them, caused respondent TSA of Delaware Valley to commence publication of articles and editorials in "TSA NEWS" denouncing and criticizing such wholesalers for selling at retail to the ultimate consumer and claiming such consumer was or should be the exclusive customer of individuals or organizations engaged in repairing and servicing such television, radio and electronic devices. Through the vehicle of "TSA NEWS" members of respondent TSA of Delaware Valley, or some of them, no later than September of 1959 caused it to commence publication of editorials or articles exhorting individuals or organizations engaged in repairing or servicing television, radio or electronic devices to unite and combine against such wholesalers of such devices or component

parts thereof, and to employ the threat of the combined and collective withdrawal of their purchases therefrom as a device to force such wholesalers to refrain from selling to the retail trade in competition with such members or others engaged in repairing or servicing such devices.

PAR. 6. Respondents, as hereinbefore named and described, in or about February 1960 combined, conspired, agreed or reached a common understanding with each other and others not named as parties hereto, including Television Service Dealers Association of Delaware County, Television Service Dealers Association of Delaware, Allied Electronic Technicians Association, Inc., and Radio Servicemen's Association of Trenton, N.J., Incorporated and their members, or some of them, to act in concert and collaboration to hinder and suppress the sale and distribution by wholesalers of television, radio or electronic devices, equipment or component parts thereof. Such combination, conspiracy, agreement or common understanding was entered into, or reached by and between said respondents and others, and has been pursued, followed, furthered implemented in interstate commerce and through utilization of the channels thereof. More particularly, the purposes sought to be accomplished by respondents through such combination, conspiracy, agreement or common understanding was the restriction and limitation of the channels of distribution employed in the marketing of television, radio and electronic devices, equipment or component parts by the elimination or diminution of sales thereof by wholesale distributors to the ultimate consumer. Illustrative of and included among the acts and practices designed to accomplish such purposes which were engaged in and pursued by respondents, or some of them, with the approval or acquiescence of all others, were the following:

(a) Communicated to such wholesale distributors threats of concerted withdrawal of patronage therefrom by television, radio and electronic equipment, service and repairmen;

(b) Combined and united to boycott such wholesale distributors to coerce them to discontinue selling television, radio and electronic devices or component parts thereof at retail to the ultimate consumer in competition with individuals or organizations engaged in the servicing and repair of such devices;

(c) Dictated or attempted to dictate practices to be followed or eschewed or discontinued, by such wholesalers in the conduct of their business involving such matters as hours of operation, display windows, and advertising;

(d) Caused publication to be made of a "white" list or lists of wholesalers who cooperated with respondents in refusing to sell at retail to the ultimate consumer;

(e) Policed sales made by wholesale distributors of television, radio and electronic devices or component parts thereof by employing individuals or committees for the purpose of shopping at the business establishments of distributors;

(f) Advocated, urged and preached, by way of published slogan, exhortation and appeal, that independent servicemen, both members of respondent association and non-members, should discontinue purchasing from wholesale distributors thereof who sold television, radio and electronic devices or component parts thereof, at retail to the ultimate consumer.

PAR. 7. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among them or others not parties hereto, and the acts and practices engaged in and followed pursuant thereto and in furtherance and implementation thereof by respondents as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the effect of which has been, is now or may be to injure, impair, frustrate, eliminate, or prevent competition between respondents and others engaged in the distribution of radio, television, or other electronic equipment, or devices or component parts thereof, or to tend to create a monopoly in respondents in the distribution of such equipment, devices or parts, or to unduly obstruct, hamper or impede the current of commerce in such equipment, devices or parts between and among the several states, or to deprive members of the public who have purchased, do purchase or may purchase such devices, equipment or parts of the advantage and opportunity to so purchase from vendors engaged in active and *bona fide* competition unimpeded by artificially imposed restraints, or to curtail the breadth of choice of vendors from which such members of the purchasing public may buy, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Richard E. Ely* and *Mr. Bruce E. Lovett* for the Commission.  
*Mr. Sidney H. Black* of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER  
JANUARY 5, 1965

On May 13, 1964, the Federal Trade Commission issued its complaint against Television Service Association of Delaware Valley, a

corporation (hereinafter called TSA), and its members, and Herman Shore and Raymond Fink, individually, as members, officers or directors, and as representative members of the entire membership of TSA, charging them with a conspiracy to boycott in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents. The complaint alleges in substance that respondents entered into a conspiracy to boycott, *i.e.*, refuse to purchase from or deal with, those wholesale distributors who sold at retail in competition with respondent servicemen.

Respondents appeared by counsel and filed answer admitting the corporate and certain other factual allegations of the complaint but denying the commerce allegations and the alleged violation. Pursuant to notice, a prehearing conference and hearings were held before the undersigned hearing examiner duly designated by the Commission to hear this proceeding.

Both parties were represented by counsel, participated in the hearings and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record and to file proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. Counsel for respondents did not so file. All of the findings of fact and conclusions of law proposed by counsel supporting the complaint not hereinafter specifically found or concluded are herewith specifically rejected.<sup>1</sup>

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following findings of fact, conclusions and order.

#### FINDINGS OF FACT

##### *I. The Business of Respondents, Other Co-Conspirators, and Their Suppliers*

TSA is a nonprofit corporation, a trade association organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business at 4710 Old York Road, Philadelphia, Pennsylvania. It was organized and is maintained to promote the welfare and mutual interests of the radio, television and electronic service industry and to improve the financial stability and professional standing of its members. Its membership is limited to servicemen, *i.e.*, service dealers, actively engaged

<sup>1</sup> 5 U.S.C. 1007(b).

