

Syllabus

IN THE MATTER OF
ALLIED RADIO CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5520. Complaint, Dec. 1, 1947—Decision, Nov. 15, 1949*

Although the functional abbreviations or names and technical trade numbers used in radio advertisements to designate various tubes or other devices may be clearly understood to define function exactly, by those members of the public engaged in the manufacture, assembly, and repair of radio sets, and by those technically trained in electronics, such abbreviations, names and numerals are not so understood by the remainder of the purchasing public, which believes that the numerical tube complement of a radio-receiving set indicates its power, sensitivity, and volume, rather than its refinement, and that the greater the number of tubes in a receiving set, the greater will be its power of detecting, receiving, and amplifying radio signals.

Where a corporation engaged in the interstate sale and distribution of radio sets, radio tubes, component and accessory parts and like products to dealers for resale, and directly to the purchasing public; through statements in catalogs and other literature circulated by mail among 500,000 to 600,000 prospective purchasers annually throughout the United States—

Represented, directly or by implication, that the tubes contained in its receiving sets were necessary and fully functioning tubes, performing the recognized and customary functions of radio receiving-set tubes in the detection, reception, and amplification of radio signals, through such language as "You get full 6-tube efficiency and power with this tube lineup," etc., and "The 5-tube circuit (including rectifier) is licensed * * *. You get full efficiency and power from the following tube lineup," etc., followed by descriptive abbreviations and technical-trade numbers;

The facts being that one of the tubes contained in the sets thus advertised was a "rectifier" tube, which, while serving the auxiliary function of changing alternating current to direct current, without which conversion the commercially sold home radio set will not operate, did not perform the primary function of detecting, receiving, and amplifying radio signals;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said sets possessed capacities and qualities which they did not in fact possess, and thereby to induce its purchase of substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

While the complaint in the instant proceeding charged respondent with misrepresenting through its advertisements the prices at which it regularly sold its sets or authorized dealers to sell the same, and the prices at which it sold or authorized its dealers to sell said products as special or reduced, the Commission found such charges not supported by the record.

Complaint

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Before *Mr. Frank Hier*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Hoffman & Davis and *Mr. Ralph J. Gutgsell*, of Chicago, Ill., for respondent.

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 Allied Radio Corp., a corporation, hereinafter referred to as respondent, has violated 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Allied Radio Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 833 West Jackson Boulevard, Chicago, Ill. The respondent is now and has been for several years last past engaged in the business of manufacturing and assembling radio-receiving sets, radio tubes, and like products, and in selling and distributing said products to dealers for resale and direct to the purchasing public.

PAR. 2. In the course and conduct of its business, respondent corporation sells and distributes its radio-receiving sets and products to dealers for resale and to members of the purchasing public throughout the United States and in the District of Columbia. Respondent now causes and for several years last past has caused its said products when sold either to dealers for resale or direct to the purchasing public to be transported from its principal place of business in Chicago, Ill., to purchasers thereof at their several points of location in the various States of the United States other than the State of Illinois and in the District of Columbia.

There is now and at all times mentioned herein has been a course of trade in said products so sold and distributed by said respondent between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business as set out and described in paragraphs 1 and 2 hereof, for the purpose of inducing the purchase of respondent's radio-receiving sets, radio tubes, and like products offered for sale and sold by it, the respondent has circulated, and has caused dealers in its products to circulate, among

prospective purchasers through the United States, by mail, advertisements in newspapers and magazines, by means of advertising folders, price lists, pamphlets, circulars, letters, and other literature by radio continuities and otherwise, many statements and representations concerning its said radio-receiving sets. By said means respondent has made, and has caused dealers to make, false and misleading statements and representations in describing said radio-receiving sets, their power and capacity for reception, the number of active functioning tubes in said radio sets, and the prices of said sets. Among such statements and representations so made and circulated by respondent, and by its dealers under its direction, are the following:

You get full 6 tube efficiency and power with this tube lineup. 12SA7GT as Conv.; 12SK7GT as IF Amp; 12SK7GT as RF Amp; 12SQ7GT as Det.-Audio Amp (Dual purpose); 50 L6GT as power output. Selenium rectifier for maximum output. * * * Net Price Each \$21.95. Your price, lots of 3 each \$20.85.

The 5 tube circuit (including rectifier) is licensed by RCA and Hazeltine, and that means the latest 1947 improvements from these engineering laboratories. You get full efficiency and power from the following tube lineup. 12SA7GT as Conv.; 12SQ7GT as Det.; 12SF7GT as IF Amp; 50L6GT as power output; 35Z5GT Rect. * * * Net Price each \$15.85. Your price lots of 3 each \$14.95.

You get exceptional sensitivity and power output from this remarkably efficient circuit which uses the latest type tubes as follows: 12SG7 as RF Amp; 12SA7GT as Osc.-Conv. (Dual Purpose); 12SK7GT as IF Amp; 12 SQ 7 GT as Det.-AVC—first audio (triple purpose); 35L6GT as beam power output; 35Z5GT Rectifier. Note the multiple-purpose tubes—they make a difference you'll appreciate in the remarkable power delivered by this receiver. * * * Net price each \$33.95. Net price lots of 3 each \$33.45.

Three-way operation Knight 6 (with rectifier) * * * Net each less batteries \$35.75. Net lots of 3 each \$33.25.

Extra sensitivity—The powerful RCA and Hazeltine license circuit uses the latest low drain tubes as follows: 1N5GT as RF; 1A7GT as Osc.-Conv. (dual purpose); 1N5GT as IF; 1H5GT as Det.-AVC—first audio (triple purpose); 1Q5GT as beam power output; 117Z6GT Rect. * * * Net less batteries \$35.75. Net lots of 3 each \$33.25.

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's radio receiving sets, the necessary number of functioning tubes with which they are equipped, and the prices thereof, and constitute representations on the part of respondent to members of the purchasing public and to dealers that said radio-receiving sets are equipped, some with five, some with six, and some with various other designated numbers of active, fully functioning tubes; that the prices represented as "net prices" are the prices at which respondent

regularly sells its said radio-receiving sets or at which it authorizes dealers to sell such products; and that the prices represented as "your price lots of 3 each" and as "net lots of three each" are special or reduced prices at which respondent sells its said radio-receiving sets or at which it authorizes dealers to sell such products.

A substantial number of the purchasing public believe that the greater the number of actually fully functioning tubes in the radio-receiving set, the better the performance and the greater its power for detecting, amplifying, and receiving sound waves, and a substantial number of the purchasing public buy respondent's said radio-receiving sets under such belief.

PAR. 4. In truth and in fact, the foregoing statements and representations made by the respondent are false, deceptive, and misleading. Respondent's aforesaid radio-receiving sets are not equipped with five, six, or other number of tubes respectively as represented by respondent, but have installed therein one or two or more ballast, nonfunctioning or tuning beacon tubes, or rectifier tubes. Such ballast or tuning beacon tubes or rectifier tubes, devices, and accessories do not serve as detecting, amplifying, or oscillating tubes and do not perform any recognized and customary function of radio tubes in the detection, amplification, and reception of radio signals. Respondent's so-called "net prices" are fictitious prices and are not the prices at which respondent regularly sells its said radio receiving sets or at which respondent authorizes dealers to sell such products, and the prices represented by respondent as "your price lots of 3 each" and as "net lots of three each" are not special or reduced prices but are the prices at which respondent sells its said radio-receiving sets or at which it authorizes dealers to sell such products in the usual and regular course of business.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent describing its said radio-receiving sets and the number of tubes contained therein, and the prices thereof, as hereinabove set out, were and are calculated to, and have had and now have, the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of such erroneous and mistaken beliefs so induced, a substantial number of the purchasing public have purchased a substantial volume of respondent's radio-receiving sets.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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assembly and repair of radio sets and by those technically trained in electronics, such abbreviations, names, and numerals are not so understood by the remainder of the purchasing public. The latter believes that the numerical tube complement of a radio-receiving set indicates its power, sensitivity and volume, rather than its refinement.

PAR. 7. The representations made by respondent with respect to the tube complement of its radio-receiving sets, as set forth herein, are erroneous and misleading, and their use by respondent has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's radio-receiving sets as a result of such erroneous belief.

PAR. 8. While the complaint contained certain charges in addition to that discussed above, the Commission finds that such charges are not supported by the record.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Allied Radio Corp., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's radio-receiving sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

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Representing, directly or by implication, that any radio-receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which did not perform the recognized and customary functions of radio-receiving-set tubes in the detection, amplification, and reception of radio signals.

It is further ordered, That respondent shall, within 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.

Syllabus

IN THE MATTER OF
THE WORLD SYNDICATE PUBLISHING CO., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4634. Complaint, Nov. 14, 1941—Decision, Nov. 22, 1949*

The word "Webster's," as respects dictionaries, simply means to the public, according to the greater weight of the evidence in the instant proceeding, a dictionary, and not any particular dictionary, nor the dictionary of a particular publishing company, although it does connote, according to scholars, that a dictionary in connection with which it is used, is a literary lineal descendant of the original Webster Dictionary written by Noah Webster, and was prepared according to principles employed by him in the preparation of his dictionaries; and certain segments of the public also understand and believe, it appears, that a dictionary bearing the name "Webster," by whomsoever published, is an accurate and up-to-date one.

While executors of the estate of Noah Webster, as respects the right to the use of the name "Webster" or "Webster's," by agreement of November 5, 1844, did transfer and assign to George and Charles Merriam all of the rights which said executors had to publish "The American Dictionary in two volumes, Royal Octavo entered for copyright in September 1840," and it appears that in 1853 and 1854 other agreements granted to the Merriams the right to renew the copyright of the same American Dictionary, to publish revisions and abbreviations thereof, and to publish Webster's School Dictionary, it did not appear that the Merriams were granted the exclusive right to publish "Webster's Dictionary," or that they ever purchased the trade name "Webster's Dictionary," or that they—or anyone else—ever acquired any rights of any description in the dictionaries produced by Noah Webster in 1806, 1807, and 1828; and as a matter of fact millions of copies of dictionaries bearing the name Webster as a principal part of their titles, were published by various publishers in the United States prior to 1904, one firm alone thus publishing more than a million dictionaries thus entitled, without any arrangement or contract with the Merriams; and there are now and have been since, a great many publishers, beside said company, who publish and sell dictionaries thus entitled.

Where a corporation and its successor, publishers, and sellers since 1928 of dictionaries, the title pages, covers, bindings, and jackets of which were frequently changed without substantially changing the vocabularies, and the approximately 25 different titles of which, both current and discontinued, included the name "Webster" or "Webster's"; a third concern, which held all the outstanding stock of the other two, made the dictionaries sold by them, and owned the plant in which said products were made; and two individuals, who as president and vice president, controlled and managed said concerns; engaged in the interstate sale and distribution of said products in competition with the G. & C. Merriam Co., and other concerns—

