

Decision and Order

under circumstances similar to those of the purchaser to whom the representation is made.

B. Misrepresenting in any manner the earnings or profits to purchasers or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of respondents' products or services, and failing to secure from each such individual a signed statement acknowledging receipt of said order.

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

It is further ordered, That respondents notify the 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 the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

UNIVERSAL ELECTRONICS CORPORATION, ET AL.

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

Docket 8815. Complaint, May 26, 1970—Decision, Jan. 23, 1971

Order requiring a St. Louis Mo., distributor of radio and television tube testing devices and franchises for the sale of such products to cease misrepresenting that persons investing in respondents' franchises will receive any stated amount of income or any discounts from respondents on repeat business, that they will obtain profitable locations for their machines or can expect the sale of any certain number of tubes per day, that they will be granted exclusive territories in which to locate their machines, and that respondents will accept the return of, or aid in the resale of, the machines; respondents are also required to place in all franchise contracts a notification that such contracts may be cancelled within three days, and that respondents will refund all monies to customers cancelling contracts within this period.

Complaint

78 F.T.C.

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 Universal Electronics Corporation, a corporation, and Wendell Coker, individually and as an officer of said corporation, hereinafter referred to as respondents, have 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 Universal Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 8363 Olive Street Road, in the city of St. Louis, State of Missouri.

Respondent Wendell Coker is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR 2. Respondents are now, and for more than one year last past have been, engaged in advertising, offering for sale, selling, and distributing radio and television tube testing devices and the tubes, supplies and equipment used in connection therewith, and franchises and dealerships for the sale of such products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' usual method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid devices and products, and the business opportunities afforded by franchises or dealerships using and selling such devices and products.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their tube testing devices, tubes, and other products respondents have made and are making numerous statements and representations concerning said articles of merchandise and the business opportunities afforded through advertising and promotional material furnished by respondents to their employees, agents or representatives, and through advertisements inserted in newspapers and periodicals, and through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives, with respect to earnings, locations of machines, business methods, training, security of investment, territory and qualifications.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

FOR MIAMI AREA
NOT AN AMAZING
OPPORTUNITY NOR A ONCE IN A
LIFETIME GET RICH
PROPOSITION

But: A steady—dependable and proven successful type of business, merchandising famous brand Sylvania radio and TV tubes thru our newest self-service equipment. All accounts fully established and set up for our dealers. No selling or soliciting required. Exceptional profit margin on nationally advertised product selling in the hundreds of millions—annually. You could earn up to \$400.00 per month in spare time.

FULL INVESTMENT STARTS AT \$1,895.00 UP TO \$3,695.00 TO ENTER THIS BUSINESS.

No experience necessary; just four to eight hours a week, car, ambition, and the aggressive desire to be in business for yourself.

For more information and personal interview, write today to: UNI-TEST, 8363 Olive Blvd., Olivette, Mo., 63132. Include phone number.

OUR COMPANY INTEGRITY CAN WITHSTAND
RIGID INVESTIGATION

PAR. 6. Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, and through said statements orally made by respondents, their employees, agents and representatives, respondents have represented and do now represent, directly or by implication to the purchasing public, that:

1. Persons investing from \$1,895 up to \$3,695 can earn up to \$400 per month or more.
2. Respondents' discounts on repeat business assure exceptional and profitable income for their dealers.

Complaint

78 F.T.C.

3. Purchasers of respondents' tube testing machines and tubes can expect to receive profitable earnings from the sale of one to five tubes per machine per day.

4. Respondents obtain top sales producing locations for the placement of tube testing machines purchased from them.

5. The purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.

6. No selling or soliciting will be required, and no experience is necessary.

7. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will repurchase the machines or assist the purchaser in reselling them.

8. The purchaser's investment in the tube testing machines and tubes will be returned in nine months or one year.

9. Persons purchasing respondents' machines will have an exclusive territory in which to operate the machines.

PAR. 7. In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. In fact, persons purchasing tube testing machines and tubes from respondents generally receive little or no net profit.

2. Respondents' discounts to their dealers on repeat business do not assure an exceptional or profitable income nor are such dealers assured of an exceptional or profitable income for any other reason.

3. Purchasers of respondents' tube testing machines and tubes have not received profitable earnings from the sale of one to five tubes per machine per day and usually have not realized the number of tube sales per machine per day as specified by respondents, their salesmen or agents.

4. Respondents do not obtain top income producing locations, but place most of the machines in retail establishments such as service stations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.

5. Respondents do not train the purchasers of the tube testing machines in the operation of the machines or the methods to be used in servicing the locations where the machines are installed.

6. The purchasers of the machines are required to do selling and soliciting and to have experience since it is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by the respondents and like any other business venture experience is required.

7. Respondents do not repurchase the machines at a price comparable to the customer's investment and do not assist the purchaser in the resale of the machines regardless of the purchaser's reason for going out of business.

8. The purchaser's investment in tube testing machines and tubes is not returned within nine months, one year or within any other period of time.

9. Persons purchasing respondents' machines do not have an exclusive territory in which to operate these machines and respondents will sell the machines to any purchaser, in any location, with the necessary capital.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of franchises and dealerships for tube testing devices, tube testing machines, radio and television tubes and other products of the same general nature and kind as sold by respondent.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' franchises, dealerships and products by reason of such mistaken and erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Harry G. Shupe and Mr. John T. Hankins, for the Commission.

Green & Lander, by Mr. Martin M. Green, Clayton, M., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

NOVEMBER 6, 1970

On May 26, 1970, the Commission issued a complaint (mailed on June 3, 1970) charging the respondents with unfair and deceptive

acts and practices in violation of Section 5 of the Federal Trade Commission Act in connection with the selling of radio and television tube testing devices. Respondents' answer, filed on June 29, 1970, admitted the existence of the corporate respondent, but denied the other allegations of the complaint. On July 1, 1970, complaint counsel and counsel for respondents participated with the hearing examiner in a telephonic conference and an order was issued reciting the results thereof. The order contained a directive to each party to prepare a trial brief setting forth the anticipated issues and disclosing the names of witnesses, together with a statement of the nature of the testimony and the documentary exhibits which the party plans to introduce. The order also set forth the dates and places of hearings agreed upon. Complaint counsel's trial brief was submitted on July 10, 1970, and the respondents' trial brief on August 5, 1970.

Hearings were held at Omaha, Nebraska, on August 10, 11 and 12, 1970, at which time complaint counsel called 14 consumer witnesses and the respondent, Wendell Coker. After the case-in-chief was completed, a motion by respondents' counsel to dismiss was denied by the hearing examiner, and the respondents elected not to offer any evidence in their defense.

The hearing examiner has given full consideration to the proposals submitted and all proposed findings not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Universal Electronics Corporation is a corporation organized (in 1962), existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 8363 Olive Street Road, in the city of St. Louis, State of Missouri (CX 110), and its volume of business over a four-year period is as follows:

1966.....	297, 215 (CX 116A)
1967.....	375, 219 (CX 117A)
1968.....	320, 181 (CX 118A)
1969.....	212, 655 (CX 119A)

The company operates on a fiscal-year basis, from September 1 to August 31. The figure for 1966 is from September 1, 1965, to August 31, 1966 (Tr. 116; CX 116A).

Respondent Wendell Coker is now and has been, during the entire period of the existence of the corporation, president of, and the sole stockholder of, the corporate respondent. During that period, he has

formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices which are the subject of this proceeding, hereinafter set forth. His address is the same as that of the corporate respondent (Tr. 25-28).

Respondents are now, and, since the corporate respondent came into existence, have been, engaged in advertising, offering for sale, selling and distributing radio and television tube testing devices and the tubes, supplies and equipment used in connection therewith, and franchises and dealerships for the sale of such products to the public. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of franchises and dealerships for tube testing devices, tube testing machines, radio and television tubes and other products of the same general nature and kind as sold by respondent (Tr. 313-317).

In the course and conduct of their business as aforesaid, respondents now cause, and, since the corporate respondent came into existence, have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondents' usual method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid devices and products, and the business opportunities afforded by franchises or dealerships using and selling such devices and products.

In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their tube testing devices, tubes, and other products, respondents have made and are making numerous statements and representations concerning said articles of merchandise and the business opportunities afforded through advertising and promotional material furnished by respondents to their employees, agents, newspapers and periodicals, and through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives, with respect to earn-

