

Order

48 F. T. C.

IN THE MATTER OF
QUAKER DISTRIBUTORS, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 5673. Order, February 29, 1952

Order modifying original order of August 6, 1951, 48 F. T. C. 96, so as to require respondents, in connection with the offer, etc., of aluminum ware or other merchandise in commerce, to cease and desist from—

Representing that they are conducting a poll or survey, "unless they are in fact" so doing; or representing "that they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise"; and from making the other misrepresentations in said order below set out.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William L. Pencke for the Commission.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto of counsel for respondents, briefs and oral argument of counsel, the Commission, having ruled on the exceptions to the hearing examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on August 6, 1951, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist.

Thereafter, pursuant to a motion filed by respondents, the Commission reconsidered the matter, and being of the opinion that its order should be modified in certain respects:

It is ordered, That the respondent Quaker Distributors, Inc., a corporation, and its officers, representatives, agents and employees, and the individual respondents Jack Weinstock, Nathan Loesberg, Robert Bertin, Jack Gerstel, and Louis Tafler, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution

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of aluminum ware or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That they are conducting a poll or survey, unless they are in fact conducting a bona fide poll or survey;

2. That they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise;

3. That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, clipping of advertisements, cooperation in furnishing information, or participation in any other similar project or activity;

4. That the said merchandise is being sold at a substantial discount or reduction in price when the price so charged is the usual and customary price at which they sell the said merchandise in the ordinary course of business;

5. That respondents' aluminum ware can be used for cooking foods in general without the use of water.

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this modified 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
COVIDEO, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5923. Complaint, Sept. 14, 1951—Decision, Feb. 29, 1952

Where a corporation and its two officers and owners, engaged in the interstate sale and distribution of "Covideo" coin-operated television sets for use in hotels, motor courts, hospitals, and similar places; in advertising their said product in magazines and newspapers and by circulars, directly and by implication—

- (a) Falsely represented that they owned, operated or controlled a plant or factory where they manufactured coin-operated radios and television sets and component parts thereof;
- (b) Represented that said corporation was not a new company but had been in the field for several years; the facts being that, organized in July 1949, it commenced doing business in the following October;
- (c) Falsely represented that they maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television; and
- (d) Falsely represented that said staff engaged in over two years of research and experimentation in said field, the results of which were embodied in their said "Covideo" product, before its offer for sale;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true and thereby induce its purchase of substantial quantities of their coin-operated television sets:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. John F. Walsh for the Commission.

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 Covideo, Inc., a corporation, Sidney I. Horwatt and Louis Brown, individually and as officers of Covideo, Inc., 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 Covideo, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 212 Broadway, New York, New York.

Individual respondents Sidney I. Horwatt and Louis Brown are, respectively, president and vice-president of said corporate respondent Covideo, Inc. and, acting in such respective capacities, said respondents formulate, direct and control the practices and policies of corporate respondent, including the advertising and other representations used and business practices employed by corporate respondent, as hereinafter related. Individual respondents own the entire capital stock of corporate respondent and their principal office and place of business is that of said corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of coin-operated television sets designated by them as "Covideo," for use in hotels, motor courts, hospitals and similar places.

Respondents cause their said coin-operated television sets, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said coin-operated television sets in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said coin-operated television sets, respondents have circulated among their prospective purchasers, throughout the United States, by advertisements inserted in magazines and newspapers and by circulars sent through the mails, many statements and representations concerning their said coin-operated television sets. Among and typical of such statements and representations, disseminated as aforesaid, but not all-inclusive, are the following:

Just a word about Covideo, Inc.

We were pioneers in the manufacture of Coradio coin-operated radios; and, thousands upon thousands of our Coradio sets are in operation throughout the nation piling up profits every day for hundreds of operators . . . We mention the above so that you'll know we're not a new company; but, one that has been in the field for years and enjoys an enviable reputation for successful operation.

Covideo, Inc.

* * * * *

. . . national manufacturer has openings available in this city and surrounding communities for responsible party to independently own and operate PROFIT-

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ABLE new metal streamlined TAMPER-PROOF coin-operated television sets, fully guaranteed.

Coin-operated equipment . . . It must be built to give constant service at a minimum cost.

* * * * *

Our engineering staff spent better than two years in research and experimentation on these Covideo sets to insure perfect, troublefree operation.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents represent and have represented, directly and by implication:

That respondents own, operate or control a plant or factory where they manufacture radios, television sets and component parts thereof; that respondent corporation is not a new company but has been in the field for several years; that respondents maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television, and that this staff engaged in over two years of research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 5. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents do not operate a plant or factory where they manufacture radios, television sets and component parts thereof. On the contrary, the said television sets sold by respondents are bought, fully assembled, by respondents from other corporations, firms and individuals.

The corporate respondent is a new company, having been in business for only two years.

Respondents have not maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television, nor did such a staff engage in research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 6. There is a preference on the part of dealers and of a substantial portion of the purchasing public for dealing directly with and buying directly from manufacturers, by virtue of the belief that through such purchases they obtain advantages in price and in other respects.

PAR. 7. The use by respondents of the foregoing false and misleading advertisements and representations, employed and disseminated as aforesaid, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such advertisements were true and to induce by reason of such erroneous and mistaken belief, a substantial number of the public to purchase substantial quantities of respondents' said coin-operated television sets.

PAR. 8. The aforesaid acts and practices of respondents, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated February 29, 1952, the initial decision in the instant matter of Hearing Examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 14, 1951, issued and subsequently served its complaint in this proceeding upon respondents Covideo, Inc., a corporation, and Sidney I. Horwitt (referred to in the complaint as Sidney I. Horwatt) and Louis Brown, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, the corporate respondent answered. No answer was filed by either of the individual respondents, but they both appeared and testified at the hearing which was held pursuant to notice and at which testimony and other evidence in support of and in opposition to the allegations of the said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested. Said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Covideo, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 212 Broadway, New York, New York.

Individual respondents Sidney I. Horwitt and Louis Brown are, respectively, president and vice-president of said corporate respondent Covideo, Inc., and, acting in such respective capacities, said respondents formulate, direct and control the practices and policies of corporate respondent, including the advertising and other representations used and business practices employed by corporate respondent, as hereinafter related. The individual respondents own the entire capital stock of corporate respondent and their principal office and place of business is that of said corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of coin-operated television sets, designated by them as "Covideo," for use in hotels, motor courts, hospitals and similar places.

Respondents cause their said coin-operated television sets, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said coin-operated television sets in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said coin-operated television sets, respondents have circulated among their prospective purchasers, throughout the United States, by advertisements inserted in magazines and newspapers and by circulars sent through the mails, many statements and representations concerning their said coin-operated television sets. Among and typical of such statements and representations, disseminated as aforesaid, but not all-inclusive, are the following:

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