IN THE MATTER OF

JAMES E. TRUE ET AL. TRADING AS TIMED ENERGY

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

Docket 7123. Complaint, Apr. 16, 1958—Decision, Sept. 9, 1958

Consent order requiring distributors in New York City of a vitamin and mineral preparation designated "Vita-Timed Capsules" to cease representing falsely in advertisements in newspapers, circulars, etc., that vitamins purchased in drugstores frequently were stale and therefore had lost potency; that use of their capsules would contribute to perfect health and safeguard against a variety of serious degenerative diseases; that some vitamin products were coated with insoluble substances and would pass through the system without releasing the contents; that the "Timed-Release" feature of "Vita-Timed Capsules" made them more effective nutritionally than competitive products; and that there was no Federal law preventing sellers from making unjustified claims for excessive dosages of vitamins and minerals or insuring the effectiveness or potency of any preparation.

Mr. Ames W. Williams for the Commission.

Bass & Friend, by *Mr. Solomon H. Friend,* of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violating the provisions of the Federal Trade Commission Act by disseminating false advertisements of their vitamin and mineral preparation, designed as "Vita-Timed Capsules."

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies Respondents James E. True, Charles H. Ruby, Patricia M. Gallehr and Leon Weiss as copartners trading as Timed Energy, with their office and principal place of business located at 419 Fourth Avenue, New York, N.Y.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint,

and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That the respondents James E. True, Charles H. Ruby, Patricia M. Gallehr, and Leon Weiss, copartners, trading under the name of Timed Energy, or any other name or names, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation, Vita-Timed Capsules, or any other preparation of similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That gelatine coated vitamin products or vitamin products in sealed capsules lose their potency because of shelf age;

(b) That the use of Vita-Timed Capsules will contribute to health unless expressly and clearly limited to those cases in which ill health is due to a deficiency of one or more of the vitamins and minerals supplied by said preparation;

(c) That the use of Vita-Timed Capsules will provide a safeguard against degenerative diseases such as arthritis, diabetes, gastro-intestinal disorders, high blood pressure, pernicious anemia or heart trouble;

(d) That coated vitamin and mineral products pass through the body without releasing their contents;

(e) That vitamin products release their contents so rapidly that sufficient vitamins are not absorbed by the body to provide the quantity needed at the time;

(f) That a vitamin product which releases its contents gradually provides any greater nutrition than other types of vitamin products;

(g) That there is no Federal law which prevents sellers of vitamin products from making unjustified claims for excessive doses of vitamins or minerals;

(h) That there is no Federal law which insures the dietary effectiveness of vitamins and minerals in a product;

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof or which fails to observe the limitation set out in paragraph 1 (b) hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents James E. True, Charles H. Ruby, Patricia M. Gallehr, and Leon Weiss, copartners trading under the name of Timed Energy, shall, within sixth (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 the order to cease and desist.

IN THE MATTER OF

STANLEY ELECTRONICS CORPORATION ET AL.

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

Docket 7078. Complaint, Mar. 3, 1958—Decision, Sept. 11, 1958

Consent order requiring sellers in Paterson, N.J., of radio and television tubes principally to consumers, including repairmen, to cease referring falsely to their products in advertising brochures and advertisements in magazines, etc., as "Brand new pre-tested tubes" when many of such tubes were used, pull-out, manufacturers' surplus, military surplus, and factory reject; and to cease selling such inferior products without disclosing their true nature on the tube, box, carton, invoices, or in advertising.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser*, of Paterson, N.J., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with falsely and deceptively representing that the television and radio tubes which they sell and distribute in commerce are new, unused and of first quality, and with failure to disclose the true nature of their tubes, in violation of the provisions of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies Respondent Stanley Electronics Corporation as a New Jersey corporation, with its office and principal place of business located at 840 Main Street, Paterson, N.J., and individual respondents Stanley Brown and Philip L. Bornstein as president and secretary, respectively, of the respondent corporation, whose affairs, activities and policies of business they control, their address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations;

that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Stanley Electronics Corporation, a corporation, and its officers, and Stanley Brown and Philip L. Bornstein, individually and as officers of Stanley Electronics Corporation, respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television or radio tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that used, pull-out, factory rejects, military surplus, or manufacturers' surplus tubes are new or of first quality;

2. Selling, offering for sale, or distributing used, pull-out, factory rejects, military surplus or manufacturers' surplus radio or television tubes without clearly disclosing on the tube or the individual carton in which each tube is packaged when sold this way and in advertising, invoices, and shipping memoranda that

they are used, pull-out, factory rejects, military surplus or manufacturers' surplus tubes, as the case may be;

3. Selling, offering for sale, or distributing any radio or television tube which is not new or first quality without clearly and conspicuously disclosing that fact on the tube, or the individual carton in which each tube is packaged when sold this way, and in advertising, invoices and shipping memoranda.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Stanley Electronics Corporation, a corporation, and Stanley Brown and Philip L. Bornstein, individually and as officers of said corporation, 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 the order to cease and desist.

IN THE MATTER OF

MAGUIRE INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7090. Complaint, Mar. 20, 1958—Decision, Sept. 11, 1958

Consent order requiring a manufacturer of electronic components, including coils and transformers, in Mt. Carmel, Ill., selling principally to jobbers or distributors of television and radio repair parts for resale to dealers, industrial accounts, and radio and television repair shops, to cease discriminating in price by giving a 10 percent rebate to customers whose purchases from it were equal to their total purchases from all sources in the previous twelve months, 7½ percent rebate if they equaled 75% of the total, and 5 percent if they equaled 50% of the total purchases; and to cease offering illegal inducements to customers to handle its said products exclusively by (a) utilizing aforesaid sales program, (b) granting a 10 percent rebate to customers who agreed to purchase solely from it, and (c) buying up their stocks of competitive products and selling them to competitors' distributors at less than cost or much less than the prices charged by competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act as amended, the Commission alleges:

PARAGRAPH 1. Maguire Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 7th and Belmont Streets, Mt. Carmel, Ill.

PAR. 2. Respondent is principally engaged in the business of manufacturing, selling and distributing electronic components in-

cluding coils and transformers. Respondent's business in electronic components is conducted by and under the name of its wholly owned division, Thordarson-Meissner Manufacturing Division. Respondent's total sales in 1957 exceeded $2,400,000.

A principal market for respondent's products consists of jobbers or distributors of television and radio repair parts. Said jobbers or distributors (hereinafter referred to as distributors) resell electronic components purchased from respondent or from respondent's competitors to dealers, industrial accounts and radio-television repair shops.

Respondent manufactures and produces electronic components in its factory in Mt. Carmel, Ill., and sells and ships said components to its distributor customers located in every major trading area of every state of the United States. Respondent in the sale of said components has at all times relevant herein been and now is engaged in commerce among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, the respondent has been and is now in substantial competition in the sale of electronic components with other sellers of such products. In many trading areas throughout the United States respondent sells its products to two or more electronic components distributors, who are in substantial competition each with the other in the resale of such products.

PAR. 4. In the course and conduct of its business in commerce, the respondent has been and is now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some distributors at higher and less favorable prices than it sells them to other distributors who are competitively engaged each with the other in the resale of said products.

Respondent has effected said discriminations between and among its distributor customers in the manner and by the methods hereinafter described.

Respondent secures from each of its customers and from prospective customers, statements of total purchases of transformers and coils from all suppliers during the previous 12 months. Respondent then offers to extend and pay, and does in fact extend and pay, annual rebates to said customers on their purchases from respondent in the ensuing 12 months on the following basis:

10% rebate if purchases from respondent are equal to total purchases from all sources in the previous 12 months;

7½% rebate if purchases from respondent are equal to 75% of total purchases from all sources in the previous 12 months;

5% rebate if purchasers from respondent are equal to 50% of total purchases from all sources in the previous 12 months.

Through the operation of respondent's sales program as above described, those customers who do not purchase from respondent an amount equal to 50% of their previous year's total requirements of transformers and coils are charged higher and less favorable net prices than other competing customers who buy from respondent an amount sufficient to qualify for one of the rebates set out above. Those customers who purchase from respondent an amount equal to 50% of their previous year's total requirements but less than 75% are charged higher and less favorable prices than other competing customers who purchase from respondent an amount equal to 75% or 100% of their previous year's requirements. Those customers who purchase from respondent an amount equal to 75% of their previous year's total requirements but less than 100% are charged higher and less favorable prices than other competing customers who purchased from respondent an amount equal to 100% of their previous year's requirements.

PAR. 5. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between respondent and competing sellers of similar electronic components and between and among respondent's distributor customers.

PAR. 6. The acts and practices of respondent as above alleged constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Count II

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 7. Paragraphs 1 through 4 of Count I are hereby incorporated by reference and made a part of this charge as fully and with the same effect as though here again set forth verbatim.

PAR. 8. In the course and conduct of its business, respondent, as an inducement to customers and prospective customers who handle and stock the coils and transformers of respondent's competitors to discontinue handling and stocking such competitive products and thereafter to handle and stock respondent's products,

has engaged and is now engaging in the following methods and practices:

(a) Utilizing and placing into effect a sales program as described in paragraph 4 above, which grants progressively lower prices through annual rebates to customers who purchase progressively higher percentages of their total requirements of such products from respondent.

(b) Granting or paying a 10% rebate to those customers who agree to purchase their full requirements of coils and transformers from respondent and thereafter not to deal in the products of competitors of respondent.

(c) Offering or agreeing to take over and buy up and by taking over and buying up the stocks of competitive products in the hands of customers and prospective customers.

(d) Selling or offering to sell the products of competitors purchased from customers or prospective customers as alleged in the preceding paragraph, to the distributor customers of competitors at prices below the cost of such products to respondent or at prices substantially lower than the prices charged by respondent's competitors for such products.

PAR. 9. The aforesaid methods, acts, and practices, as alleged in paragraph 8, have had and now have the following capacity, tendency, purpose and effect:

(a) To induce distributor customers of competitors of respondent to discontinue purchasing, stocking and selling said competitors' coils and transformers and instead to purchase, stock and sell respondent's coils and transformers exclusively;

(b) To enable distributors who purchase coils and transformers from respondent which were originally manufactured and sold by competitors of respondent to sell such products at prices below those at which competitors' customers are able to sell the same products;

(c) Unreasonably to injure, hinder, hamper and restrain competing manufacturers and to demoralize their markets, in that by selling, or offering to sell at low prices and below cost, products originally manufactured by competitors, the respondent has severely damaged the reputation of such competitive products and created a condition whereby distributors who have been buying from competitors at regular prices, are forced either to discontinue such purchases, or, by continuing to purchase from competitors of respondent, to risk the necessity of meeting the low

resale price offered by other distributors who purchased identical products from respondent.

PAR. 10. The aforesaid methods, acts and practices of respondent, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondent from its competitors, and, in consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various states of the United States and the District of Columbia, and said methods, acts and practices are all to the prejudice and injury of the public, and of respondent's competitors, and customers of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act.

Mr. William W. Rogal supporting the complaint.

Mr. James W. Cassedy, of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 20, 1958, charging it with having violated Section 2(a) of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, by discriminating in price between competing customers and by offering customers and prospective customers certain illegal inducements to discontinue handling competitive products and to handle respondent's products. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement, dated July 10, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such al-

legations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the compaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Maguire Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Seventh and Belmont Street, Mt. Carmel, Ill.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the provisions of the Clayton Act, as amended, and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Maguire Industries, Inc., a corporation, its officers, representatives, agents and employees, directly or by any corporate or other device, in or in connection with the sale, for replacement purposes of electronic components including transformers and coils, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

It is further ordered, That respondent Maguire Industries, Inc., a corporation, and its officers, representatives, agents, and employees, directly or by any corporate or other device in, or in connection with, the course and conduct of its business of selling electronic components, including transformers and coils, for replacement purposes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Granting or offering to grant a lower price, by means of a greater annual rebate or otherwise, to any customer for purchasing a greater percentage of its total requirements of any said product from respondent.

(b) Granting or offering to grant a lower price to any customer for agreeing to purchase all of its requirements of any said product from respondent.

(c) Purchasing from any customer or prospective customer said customer's stocks of competing electronic components including transformers and coils.

(d) Selling or offering to sell competitive electronic components, including transformers and coils, at prices lower than the prices charged by respondent's competitors for the same products or at prices below the cost of such products to the respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (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 the order to cease and desist.

IN THE MATTER OF

MOORE PRODUCTS CORP. ET AL.

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

Docket 7126. Complaint, Apr. 18, 1958—Decision, Sept. 11, 1958

Consent order requiring distributors in New York City to cease selling without disclosure of Japanese origin, expansion watchbands of base metals which they imported, colored gold by electrolytic process, and sold to jobbers and wholesalers under the trade name "Mor-Flex"; and to cease representing falsely that such products were "Gold Plated" and "Guaranteed."

Mr. Garland S. Ferguson for the Commission.
No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges the respondents Moore Products Corp., a corporation, located at 35 West 31st Street, New York, N.Y., and Joseph M. Moore and Ann Moore, individually and as officers of said corporation, located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of expansion watchbands under the trade name "Mor-Flex."

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and