

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.

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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.

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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-

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ings, 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 which appeared in *The Miami News*, Miami, Florida, on October 22, 1965 (CX 9):

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 T.V. 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.

Also, the following appeared in *The Clearwater Sun*, Clearwater, Florida, on January 9, 1967 (CX 10):

DISTRIBUTOR
For This Area

Recession-Depression Proof Business
Part-Time Work—For Extra Income.

Now! A chance to enter the multi million dollar Electronics Replacement field. No experience required! Merely restock locations with world famous SYLVANIA or RCA radio, TV, and color tubes; sold through our new (1957 Model) self—service tube testers. Company guaranteed discounts in this repeat business assures exceptional and profitable income for our dealers. All accounts contracted for and set up, plus training and operating instructions by Company. Will not interfere with present business or occupation, as accounts can be serviced evenings or weekends! Color TV creating enormous demand and surge in future sales throughout the industry.

Earning potential up to \$500.00 per month or more, depending on size of route.

MINIMUM INVESTMENT Required. Also, a good car and 4 to 8 spare hours a week. If you are interested and meet these requirements; have a genuine desire to be self-sufficient and successful in an ever expanding business of your own, then write us today! UNIVERSAL ELECTRONICS CORP.; 8363 Olive Street Road; St. Louis 32, Mo. Include phone number in resume.

OUR COMPANY INTEGRITY CAN WITHSTAND
THOROUGH INVESTIGATION.

For other advertisements of like import, see also CX 11-14, CX 88, and CX 138.

Paragraph Six of the complaint reads:

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.
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.

Paragraph Seven of the complaint reads:

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.

Based upon the evidence hereinafter set forth, it is the opinion and finding of the hearing examiner that all of the charges under Paragraphs Six and Seven of the complaint have been sustained; that 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; and that 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.

Respondent WENDELL COKER was called as a witness by complaint counsel and testified at length as follows (Tr. 20-88; 115-146; 313-354): The advertisements run by Universal Electronics Corporation hereinbefore mentioned were composed by him; referring to the figure of \$400 earnings used in the Miami, Florida, ad, he said he arrived at this figure from reports he received from places that had tube testers and a report published by Vend Magazine of a survey they conducted which showed the average location sold 30 to 40 tubes a week; regarding the statement of "Earning potential up to \$500 per month" appearing in the *Clearwater Sun*, Clearwater, Florida (CX 10), he said, "We had two seventy-five, three hundred, four hundred, five hundred. It fluctuated over the years" (Tr. 72); that the \$400 figure is not based on actual experience with his dealers, but on "what we feel they could earn" (Tr. 71); that he was aware

that customers responded to the ads containing earning statements (Tr. 343); and he stated (Tr. 343):

My conclusion has been and is, the average person that sees the ad in the paper, cuts the ad in half. In other words, they see the ad in the paper, I have had them tell me, they only expected to make half of what you generally tell them. They didn't expect to make that much in the first place. And I really felt and believed anybody that worked at this business, kept a machine at the location, could make \$200 to \$250 a month. But, to compensate for the average person's cutting promotional figures in half and to keep up with the competition advertising at the same time six and seven hundred dollars a month, I said four and five hundred dollars a month. I always try to keep a little lower than my competition.

Mr. Coker testified that, to earn \$400 per month, a dealer would have to have five machines costing \$3,695, and he would have to sell between 300 and 350 tubes, or in excess of 60 tubes per machine per month, and he did not know how many of his dealers sold on an average of two tubes a machine each day (Tr. 68-69). They advertised in every state except Alaska; the average cost for each ad was around \$30, and in the fiscal year ending in August 1966 they ran about 500 ads; during the time they have been in business, they have made sales in 44 or 45 states (Tr. 128-130). Upon the receipt of an inquiry by a person answering one of its ads, Universal, on one of its letterheads over the signature of Mr. Coker, would answer as follows CX 1):

We would like to take this opportunity to thank you for the interest you have shown in our advertisement in your local paper.

This is a business that can be handled on a part-time basis to start and expanded to a full-time operation *with unlimited earning potential*. We furnish equipment and locations, plus fully set up the business for our dealers; so, there is no selling or soliciting required of the party we select.

If you have never had an occasion to use a self-service tube tester, may we suggest that you check with a local store which has a tube tester, so you will know radio and television tubes are being sold through these self-service units.

We are placing you on our representative's schedule for an early interview. *Since this is a proven business*, we have many inquiries from people who are sincerely interested in becoming dealers for us and act promptly on appointing the party we feel best qualified. Should you be further interested in our type of business, please feel free to check with the references on the enclosed sheet; so, that in the event we meet each others approval, at the time of our representative's interview, we will both be in a position to consummate a dealership.

Our representative will contact you in the immediate future in regard to setting up an interview with you on this opportunity. (Emphasis added.)

Mr. Coker did most of the selling for the company in 1962 and 1963; since that time, he has sold a few machines each year, but the

bulk of sales were made by others (Tr. 144); he interviews prospective salesmen and hires them for the company; "They just come around to see me. * * * they will take a trip and act as an agent for me on the leads that I have" (Tr. 134); "* * * these * * * are what we call professional salesmen. Most of them sold tube testers before I got in the business" (Tr. 135); a salesman was furnished a price list and a certain amount of sales information; part of the literature that the salesmen carried with them when they interviewed customers was the Vend Magazine; the statements concerning earnings that were made by the salesmen were figures taken from the magazine article (Tr. 336-338); when asked if he furnished some information to his salesmen concerning the number of tubes that a machine would sell, Mr. Coker replied: "I would show him the article in Vend Magazine and let the man make his own conclusions" (Tr. 339); when asked, "Now, how would they sell a machine to a customer without explaining to him how much the machine would produce as far as sales and earnings are concerned?" he said: "It seems to me it would be hard to sell if he didn't" (Tr. 341); a salesman in making a sale would obtain the signature of the purchaser, called a "Dealer," on a PURCHASE ORDER CONTRACT (CX 4), which provided in part that Universal agreed to furnish the number of "Tube Testing Machines" ordered; "Secure initial locations" in a specified area; "Give Dealer signed location contracts for Tube Tester and Tube Inventory for each location;" and "Instruct Dealer and Locations on the functions and operation of equipment;" payments thereon were to be made to Universal, and the "Dealer is to retain full title to all equipment & merchandise." The contract mailed to the company by the salesman (Tr. 34) was subject to company approval, and would be approved by Mr. Coker (Tr. 49); only in one instance did he reject a contract and that was in 1964 (Tr. 46); a salesman was paid on a commission basis, receiving \$900 on a sale of \$3,590 (Tr. 84). By letter (CX 24), Universal would notify the purchaser of his acceptance as a dealer, of the approval of the contract, request the money balance due thereon, and state the following: "We will process your order accordingly and keep you posted of its progress, shipping data, and tenure of our location man." The machines would not be shipped before they were fully paid for (Tr. 49); shortly after payment, the machines and tubes would be shipped to the dealer; a location man employed by Universal, who is paid \$35 or \$40 for each tester placed, would contact the dealer, canvass various stores and filling stations in the territory assigned by the contract, and secure the number of places he would need for the

machines; the locator sets up the machines with tubes, on a consignment basis, at the places agreed to by the owners, who are paid a commission of 25 percent or 30 percent of the retail price for each tube sold; if a dealer is not satisfied with the original location, it is up to him to change the location (Tr. 55-58); the reason for relocating a machine was that such location was not proving profitable or for other various reasons (Tr. 61-62); three-fourths of the total number of dealers for Universal have had to relocate at least one of their machines (Tr. 64). Universal does not repurchase the machines from all dealers who become dissatisfied with the business; when asked, "How do you select those you repurchase and those that you don't?" he answered: "There are two determining factors actually. One is how great the need is to get out of the business, or liquidate it, and also the financial position of the company, if we can afford to buy them back" (Tr. 125); he stated: "I generally bought back a machine and tubes on the basis of approximately \$300 per machine and tubes" (Tr. 122), which figure represented Universal's cost for a machine and a kit of 200 tubes (Tr. 80-81). The amount of repurchases for the fiscal year ending 1966 totaled \$18,437; 1967—\$23,344; 1968—\$22,880; and 1969—\$6,216 (Tr. 77, 117 thru 122; CX 112E, 117A, 118A and 119A). The tube testers consist of a head panel, purchased by Universal from a New York manufacturer at a cost of \$70 or \$75, and a cabinet designed by Mr. Coker and made by a Missouri firm at a cost of \$37. The panels are shipped to the cabinet maker where they are assembled, boxed ready for shipment, and, on orders from Universal, are sent to purchasers (Tr. 43, 44, 80). Sales have been going down in recent years (Tr. 127). He testified (Tr. 128):

The main factor of the tubes is being designed out of television sets. In another year or two, there won't be any television sets hardly on the market coming out with tubes in them.

DONALD H. RING, of McFarland, Wisconsin, an automobile body man for 23 years, testified (Tr. 89-115) that, while a resident of Madison, Wisconsin, in 1966, after answering an ad in the local paper, he received a letter from Universal (CX 113) advising that its representative would call upon him. Universal's representative, Mr. George Turner, called upon him, and he gathered that he could make about \$1 profit per tube and each machine that he purchased would sell no less than a tube a day or approximately \$100 a month for three machines. He was told that the locations were already established by the company and, that, if he subsequently changed his mind, "they would buy the whole thing back, the tubes and equip-

ment, at a 25 per cent discount; in other words, they would give me three-quarters of the money back" (Tr. 102). He stated that he understood that it was to be a franchise deal of one dealer to a town or area (Tr. 113). On March 31, 1966, he signed a purchase order contract (CX 114), because "it sounded like I could make some money" (Tr. 99), for three tube testers for the sum of \$1,895 to be located in the city of Madison and within a 15-mile radius. The location man and the machines arrived in Madison the same day, which was in the last part of May or the first part of June 1966. Locations had not been previously procured and the location man "used my phone book and found three locations. It took him two days to do it" (Tr. 100). Locations were secured at a hardware store, grocery store, and variety store. The locations were not profitable. The machine at the grocery store remained there for six months and, although it was the best of the three locations, it was removed for the reason that the grocer said he did not have room for it and that it did not make him enough profit. After about six months he did not call on the locations or service the machines for the reason that he had lost interest because he could not make enough money to cover the route. He did not keep any books but he was sure that he did not gross over \$200. Mr. Ring did not attempt to find other locations for the reason that he had become discouraged and lost interest after the first six months. He wrote a letter to Universal about buying back the tubes and equipment and received a letter in return from Universal, signed by Mr. Coker (which has been lost), in which they told him they were very disappointed that he didn't do better, and that they couldn't buy back the machines at that time.

YANÓ S. FALCONE, of Omaha, Nebraska, 42 years of age, with a tenth grade education, and a manufacturing representative for 22 years, testified (Tr. 148-176) that he answered an ad that appeared in an Omaha newspaper and on March 13, 1967, Mr. Pat O'Brien, Universal's representative, came to see him. Mr. O'Brien said he had tube testers in various locations in California from which he derived a net income of around a hundred thousand dollars a year. This statement made Mr. Falcone "a little more enthusiastic about wanting to get into the business" (Tr. 149). Mr. O'Brien had him write down figures (CX 20) which showed that he could realize a minimum profit of \$654.00 a month from five machines. The profit on the sale of one tube was \$1.09, and the sale of 4 tubes per location each day would give \$4.36, or \$21.80 a day for five locations, times 30 days would give \$654.00 a month; assuming his sales were only half of that, his minimum still would be \$327.00 a month and, based on

