

# FEDERAL TRADE COMMISSION DECISIONS

## Findings, Opinions and Orders

IN THE MATTER OF

LITTON INDUSTRIES, INC.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9123. Complaint, Jan. 31, 1979—Final Order, Jan. 5, 1981*

This order requires, among other things, a Beverly Hills, Calif. firm, engaged in the manufacture, sale, distribution and advertising of various products, to cease making any unsubstantiated representations regarding the performance, characteristics, or benefit of any microwave oven; or its superiority over competing products. Further, the company must cease failing to maintain, for three years, accurate records of all materials, test reports, studies and surveys relating to any such representation. Additionally, the order prohibits the company from misrepresenting the purpose, content, reliability or conclusions of a test or survey; and advertising the results of any such survey, unless respondents in the survey are representative of the group referred to in the ads.

### *Appearances*

For the Commission: *Robert L. Barton, Jr., Ronald E. Bogard, Carol Jennings and Julie K. Niemasik.*

For the respondent: *J. Wallace Adair, Howrey & Simon, Washington, D.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 Litton Industries, Inc., a corporation (hereafter "Respondent" or "Litton"), has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Litton Industries, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the

State of Delaware, with its executive office and principal place of business located at 360 North Crescent Drive, Beverly Hills, California. Litton's Microwave Cooking Products Division is located at 1405 Xenium Lane North, Minneapolis, Minnesota.

PAR. 2. Litton is now, and for some time in the past has been, engaged in the manufacture, distribution, advertising, and sale of various products including microwave ovens.

PAR. 3. Respondent Litton causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Litton maintains, and at all times mentioned herein has maintained, a course of trade in said products in and affecting commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of said business, Litton has disseminated and caused the dissemination of advertisements for microwave ovens manufactured by Litton, by various means in or affecting commerce, including magazines and [2]newspapers distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said microwave ovens.

PAR. 5. Typical and illustrative of the advertisements so disseminated or caused to be disseminated by Litton are the advertisements attached as Exhibits A, B, C and D, designated as the "initial consumer microwave independent technician survey advertisement," the "revised consumer microwave independent technician survey advertisement," the "initial commercial microwave independent technician survey advertisement," and the "revised commercial microwave independent technician survey advertisement," respectively.

PAR. 6. In Exhibit A, the "initial consumer microwave independent technician survey advertisement," printed in the *Wall Street Journal*, October 25 and December 13, 1976, and elsewhere, and in Exhibit B, the "revised consumer microwave independent technician survey advertisement," printed in *HFD Retailing Home Furnishings*, August 22, 1977, and in other advertisements substantially similar thereto, Litton has represented, directly or by implication, that:

1. The majority of independent microwave oven service technicians would recommend Litton to a friend.
2. The majority of independent microwave oven service technicians are of the opinion that Litton microwave ovens are the easiest to repair of all microwave oven brands.

3. The majority of independent microwave oven service technicians are of the opinion that Litton microwave ovens are superior in quality to all other microwave oven brands.

4. The majority of independent microwave oven service technicians are of the opinion that Litton microwave ovens require the fewest repairs of all microwave oven brands.

5. The majority of independent microwave oven service technicians have Litton microwave ovens in their homes.

6. Representations 1-5 were proved by a survey independently conducted by Custom Research Inc., in June 1976.

PAR. 7. In Exhibit C, the "initial commercial microwave independent technician survey advertisement," printed in *Hospitality (Restaurant)*, November 1976, and elsewhere, and in Exhibit D, the "revised commercial microwave independent technician survey advertisement," printed in *Restaurant Business*, September 1977, and elsewhere, and in other advertisements substantially similar thereto, Litton has represented, directly or by implication, that: [3]

1. The majority of independent microwave oven service technicians would recommend Litton to their customers.

2. The majority of independent microwave oven service technicians are of the opinion that Litton commercial microwave ovens are superior in quality to all other microwave oven brands.

3. The majority of independent microwave oven service technicians are of the opinion that Litton commercial microwave ovens are the easiest to repair on location of all microwave oven brands.

4. The majority of independent microwave oven service technicians are of the opinion that Litton commercial microwave ovens require the fewest repairs of all microwave oven brands.

5. The majority of independent microwave oven service technicians are of the opinion that Litton commercial microwave ovens are the least costly to maintain in operation over time of all microwave oven brands.

6. Representations 1-5 were proved by an April 1976 survey independently conducted by Custom Research, Inc.

In addition, in Exhibit C, Litton has represented, directly or by implication, that Litton is the best commercial microwave oven buy and that this representation was proved by the above-referenced survey.

PAR. 8. In Exhibits A and B, and in other advertisements substantially similar thereto, Litton has represented, directly or by implication, that:

1. Litton microwave ovens are superior in quality to all other microwave oven brands.
2. Litton microwave ovens are the easiest to repair of all microwave oven brands.
3. Litton microwave ovens require the fewest repairs of all microwave oven brands.

PAR. 9. In Exhibits C and D, and in other advertisements substantially similar thereto, Litton has represented, directly or by implication, that:

1. Litton commercial microwave ovens are superior in quality to all other microwave oven brands. [4]
2. Litton commercial microwave ovens are the easiest to repair on location of all microwave oven brands.
3. Litton commercial microwave ovens require the fewest repairs of all microwave oven brands.
4. Litton commercial microwave ovens are the least costly to maintain in operation over time of all microwave oven brands.

PAR. 10. In truth and in fact, the April and June 1976 technician surveys conducted for Litton by Custom Research, Inc., do not prove the representations listed in Paragraphs Six and Seven, for reasons including but not limited to the following:

(a) The survey respondents were drawn exclusively from the list of Litton authorized microwave oven service agents. As such the sample surveyed was not representative of the population of independent microwave oven service technicians and the surveys were biased.

(b) The surveys failed to establish that the survey respondents possessed sufficient expertise with either (1) microwave ovens or (2) competitive brands of microwave ovens to qualify as respondents for a microwave oven comparative brand survey.

(c) In some paired comparisons, the results lacked statistical significance because the base number was too small.

(d) The surveys conducted for Litton by Custom Research, Inc., were not in fact independent surveys. The surveys were designed and analyzed by Litton employees. The role of Custom Research was limited to placing the telephone calls, from a list of names supplied by Litton, and conducting the interviews, from a questionnaire supplied by Litton.

For the above reasons, representation 6 in Paragraphs Six and

Seven is false. Therefore, representation 6, contained in Exhibits A, B, C and D, was, and is, deceptive and unfair.

PAR. 11. In Exhibits A, B, C and D, and other advertisements substantially similar thereto, Litton has represented, directly or by implication, that it had a reasonable basis of support for the representations contained in those advertisements, at the time those representations were made. In truth and in fact, for the reasons enumerated in Paragraph Ten, Litton had no reasonable basis of support for the representations listed in Paragraphs Six, Seven, Eight and Nine, at the time those representations were made. Therefore, the representations listed in Paragraphs Six, Seven, Eight and Nine were, and are, deceptive and unfair. [5]

PAR. 12. In the course and conduct of the aforesaid business, and at all times mentioned herein, Litton has been and is now in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of microwave ovens of the same general kind and nature as those sold by Litton.

PAR. 13. The use by Litton of the aforesaid unfair and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of microwave ovens manufactured by Litton.

PAR. 14. The aforesaid acts and practices of Litton, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

cut in the circulation of the largest television traffic of the year, and other radio and television spots, but clearly AMC was in good luck again. "We have maintained excellent liquidity and been able to reduce fixed costs and increase a lot of local revenue points," says a top American Motors executive. "It was a difficult period," said chairman Roy D. Chapman Jr. and president William V. French in a statement designed to reassure a worried public.

But the decline in small car sales does not fully explain the industry-wide lag. Some analysts and auto executives say the Ford strike may have deterred buyers who were planning to buy a new car. Others believe the strong showing by cars and light pickup trucks may be leading to a recession in auto sales. The industry's first three months of 1974 had a combined sales of about 1,300,000 cars, including light trucks, over the country, has put off many would-be buyers.

Whatever the reasons, some analysts are scaling back their estimates of sales for the current model year—in some cases from as much as 11.3 million vehicles to as low as 10.5 million. Such a decline would hardly be disastrous, but it would reduce one of the major props that has supported the recovery during the long post- and post-January Carter recession economic recovery.

By the way, the author of this article is a former...

**ISRAEL: The Economic Enemy**

Israel is an economic enemy, and for the time being at least its military needs seem satisfied. But Israel has problems within its borders are facing a stagflation economy and runaway inflation—and as far as they are facing. A fortnight ago, it announced a plan to close a wide range of factories, says Prime Minister Yitzhak Rabin. Labor ministers announced that they would increase the subsidy cuts they have set for a program since by 45 per cent. The result by last week was the country's worst labor rebellion in years. Well over 70,000 Israelis had stopped working or threatened to strike in protest. And the government, which has been pushing an austerity program to slow Israel's 35 per cent inflation rate and whittle a \$2 billion trade deficit, seemed unable to calm things down.

Israel's economic woes date to the 1973 Yom Kippur war and the Arab oil embargo and worldwide starvation that followed. Net oil exports \$2.6 billion a year, but inflation sent 1973 in imports of all kinds soaring from \$2.2 billion in 1972 to \$3.6 billion in each of the next two years. At the same time, the global slump dried up markets for Israel's traditional exports—mainly textiles, processed food and chemicals. Finally, the Israeli military had to make up for the losses it suffered during the Yom

# Quality is No. 1 at Litton!

76% of the independent microwave oven service technicians surveyed recommend Litton.



Litton Model 412 microwave oven.

Litton leads all brands.

Brand To Brand	PREFERENCE FOR SPECIFIC BRANDS AMONG TECHNICIANS SERVICING THOSE BRANDS			AVERAGE PREFERENCE FOR LITTON VS. ALL COMBINATION OF OTHER BRANDS
	Litton vs. GE	Litton vs. Amana	Litton vs. Norge Chef	
Which Microwave Oven Brand would you recommend to a friend?	59% vs. 23%	66% vs. 18%	61% vs. 1%	76% vs. 8%
Which Microwave Oven Brand is easiest to repair?	65% vs. 5%	62% vs. 8%	71% vs. 0%	72% vs. 4%
Which Microwave Oven Brand is the best quality?	48% vs. 16%	50% vs. 26%	69% vs. 1%	63% vs. 9%
Which Microwave Oven Brand requires fewest repairs?	38% vs. 22%	42% vs. 24%	59% vs. 3%	53% vs. 12%
Which Microwave Oven Brand do you have in your home?	48% vs. 19%	59% vs. 18%	70% vs. 5%	67% vs. 10%

Among independent technicians servicing Litton and competitive microwave ovens, an average of 76% of those surveyed said they would recommend Litton to a friend. And an average of 63% identified Litton brand ovens as having the best quality.

You'll find it in our full line of advanced countertop microwave ovens, double oven and combination microwave ranges.

Litton Microwave Ovens are available in a variety of sizes and colors. For more information, call 800-328-7777. © 1974, Litton Microwave Ovens. Litton Microwave Ovens are a registered trademark of Litton Microwave Ovens.

And in such Litton features as Vari-Cook® oven control, Vari-Temp® automatic temperature control and new Memorymatic™ microwave program cooking. Innovative ways to microwave more foods better.

Need any more reasons to buy Litton? Ask your Litton dealer for a microwave cooking demonstration. For his name and number, call us right now, toll free 800-328-7777.



Litton... changing the way America Cooks.

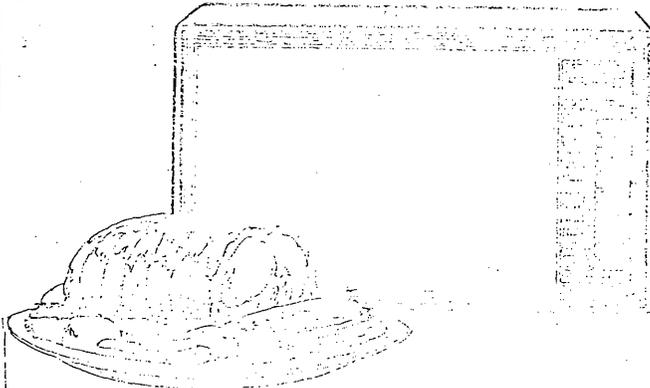
EXHIBIT A

Complaint

EXHIBIT B

# Quality is No. 1 at Litton!

73% of the microwave oven service technicians surveyed\* would recommend Litton.



Among technicians serving Litton and competitive microwave ovens, 73% of those surveyed said they would recommend Litton to a friend. Survey respondents were 234 technicians who work for independent service agencies authorized to service Litton microwave ovens and ovens of at least one other brand.

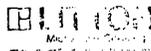
And 51% of those surveyed preferred Litton brand ovens to the competition.

That's because our ovens are made to be repaired. It's the only way you can get the best microwave oven repair service.

You'll find that in our full line of advanced countertop ovens, double-oven and combination ranges, and in such Litton features as "AutoCook" oven control, Van-Temp® automatic temperature control and Memoguard™ microwave program cooking. Invaluable systems that make your life better.

Need more information? Call Litton for a Litton microwave oven. It's the only way to get it!

Litton Industries, Inc.  
P.O. Box 1000  
Mesa, Arizona 85201  
Litton Microwave Ovens



Litton leads in service.

PREFERRED FOR SERVICE TECHNICIANS SERVING LITTON AND OTHER BRANDS				
Brand	Rep.	Warranty	Parts	Price of Parts
Litton	95	95	95	95
Whirlpool	85	85	85	85
GE	75	75	75	75
Maytag	65	65	65	65
Smeg	55	55	55	55
Sharp	45	45	45	45
Black & Decker	35	35	35	35
Hamilton Beach	25	25	25	25
Other	15	15	15	15

Litton is changing the way America cooks.

73% of the microwave oven service technicians surveyed\* would recommend Litton. on 1

# Litton is the best commercial microwave oven buy.

Exhibit C  
Dec 15, 1976

80% of the independent microwave oven service technicians surveyed recommend Litton to their customers.

When technicians servicing Litton and competitive brands were asked in an independent survey\* which microwave oven they'd recommend to prospective customers, 80% said "Litton." An overwhelming preference over major competitive brands like Amana and Sharp.

These experienced servicemen prefer Litton over other brands for many reasons.

That's what we've been saying all along.

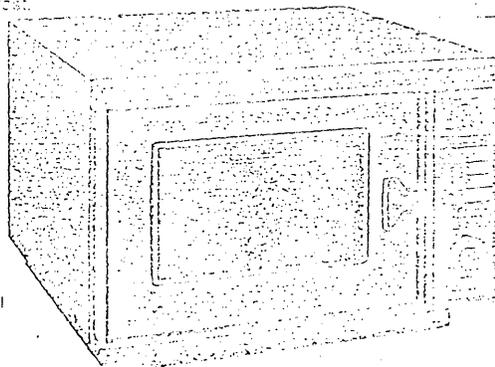
Litton offers a full line of the most advanced microwave oven systems. From 600 to 2000 watts. With such innovative features as new Vari-Power™ control, Push-button solid state timers, Automatic defrost, Intrusion-proof doors, Advanced checks and built-in safety features. Durable and built to last for added safety. And a standard Litton Advanced Power Supply system.

And each oven comes with the total support of the Litton Systems Masters: Engineers, Food Applications Chefs, Sales and Service representatives who can help increase profits and maximize efficiency.

Take the advice of your independent microwave technician. Litton is the best commercial microwave oven you can buy.

	Litton vs All** Brands Compared	Litton vs Amana	Litton vs Sharp
Best quality	75% vs 14%	75% vs 10%	80% vs 5%
Requires fewest repairs	75% vs 14%	70% vs 3%	70% vs 11%
Least costly to maintain in operation over time	69% vs 20%	65% vs 15%	60% vs 12%

\*Survey conducted by Customer Research Inc. Complete results available on request.  
\*\*Based on 1975-1976 independent survey of 1000 technicians who recommended 41 brands of microwave ovens. Litton was recommended by 80% of the technicians surveyed.  
\*\*\*Based on 1975-1976 independent survey of 1000 technicians who recommended 41 brands of microwave ovens. Litton was recommended by 75% of the technicians surveyed.



Litton...  
changing the way  
America Cooks.

EXHIBIT C

Call 800-375-7222 for more information. Litton is a registered trademark of Litton Microwave Oven Company, Inc. Litton Microwave Oven Company, Inc. is a registered trademark of Litton Microwave Oven Company, Inc.

Please send me more information.

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Firm \_\_\_\_\_  
Business address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Telephone \_\_\_\_\_  
Area code \_\_\_\_\_  
E-mail address \_\_\_\_\_

**LITTON**

OCT 1977

## 79% of microwave service technicians surveyed say Litton is the best quality commercial microwave oven.

80% would recommend Litton to their customers.

Among technicians servicing Litton and other commercial microwave ovens, 79% of the respondents said they would recommend Litton to their customers. A study preference over other brands. A study of 211 technicians who were 211 technicians who were authorized to service Litton commercial microwave ovens and who service at least one other brand.

These experienced technicians obviously prefer Litton over other brands for many reasons. And Litton quality is certainly one of them.

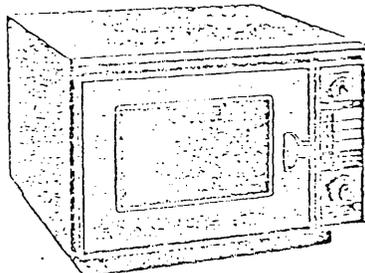
Litton offers a full line of the most advanced commercial microwave ovens. From 600 to 1000 watts. With touch controls. Or features as new VariPower™ control. Plus optional solid state timers. Automatic defrost. Inflation-proof doors. Advanced choke and shield plate design. Dual door design for increased safety. And dependable Litton® Advance Power Supply System.

And each oven comes with the total support of the Litton System Masters. Engineers. Food Applications Chefs. Sales and service representatives who can help increase profits and maximize efficiency.

Follow the preference expressed by the microwave service technicians surveyed. 79% of whom said Litton is the best quality commercial microwave oven.

©1977 Litton Microwave Cooking Products, Inc. All rights reserved. Litton is a registered trademark of Litton Microwave Cooking Products, Inc.

Brand	Best Quality	Would Recommend
Litton	79%	80%
Other	21%	20%



Litton...  
changing the way  
America Cooks.

Call 800-228-2777 toll free in Minnesota, call 612-633-7354.  
 Write Litton Microwave Cooking Products,  
 1921 Summit Central Drive, Minneapolis, MN 55440.  
 Explain more about what makes Litton a better microwave.  
 Home & Litton representative (CR) NR 107

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Firm \_\_\_\_\_  
 Business Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Area Code \_\_\_\_\_

**LITTON**  
 Microwave Cooking

©1977 Litton Microwave Cooking Products, Inc.

31-11547 Printed in U.S.A.

EXHIBIT D

INITIAL DECISION BY JOHN J. MATHIAS,  
ADMINISTRATIVE LAW JUDGE

JUNE 6, 1980

PRELIMINARY STATEMENT

The original Complaint in this matter was filed on February 1, 1979, and charged Litton Industries, Inc., a large conglomerate manufacturer and seller of various high technology products for industrial, commercial, and governmental use, with using "unfair and deceptive statements" (Complaint, Paragraph Thirteen) in advertisements for the sale of microwave ovens produced by its Litton Microwave Cooking Products ("LMCP") Division in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The Complaint was amended on April 16, 1979 to include as a respondent Litton Systems, Inc. (a wholly-owned subsidiary of Litton Industries, Inc.). Litton Microwave Cooking Products was, during the time covered by the [2]Complaint, a division of Litton Systems, Inc., rather than a direct division of Litton Industries, Inc.

The gravamen of the charges against respondents is that certain advertisements published by respondents and their dealers purported to show that independent microwave oven service technicians preferred Litton ovens in certain respects and that such preferences were revealed by surveys conducted of such independent technicians, whereas, in truth and in fact, the advertisements were "deceptive" because the underlying surveys did not provide a "reasonable basis" for the claims made.

In 1976, LMCP devised two surveys of microwave oven service agencies named on its own two lists of authorized service agencies—the commercial list of those authorized to service Litton's commercial ovens and the consumer list of those authorized to service its consumer ovens. The surveys were then conducted for it by an independent research organization. Originally, the surveys were intended for internal use only. Advertisements based thereon had not been planned. After having tabulated the results of the surveys for these internal purposes, executives of Litton decided to incorporate the results into advertising (Tr. 2023, 2035). The survey results were then published in two separate advertising campaigns, utilizing primarily newspapers, magazines and trade journals during 1976 and 1977. Appendices A, B, and D, are examples of advertisements Litton published in the first campaign.

Upon objections by Federal Trade Commission staff members to some of its claims, Litton revised the advertisements in 1977 to more

fully describe the nature of their survey (See Appendices C, and E), but subsequently discontinued the survey campaign upon further objections by staff members of the Federal Trade Commission.

In addition to advertising placed directly by Litton, retailers and distributors also engaged in newspaper radio advertising of the survey results. Some of this advertising was paid for, in whole or in part, by Litton (the "cooperative advertising program"). Appendices F through K are examples of advertisements placed by retailers and distributors. Appendices H through K were part of the cooperative program.

The principal issues presented for trial were:

(1) Did LMCP disseminate and cause to be disseminated challenged advertisements in commerce?

(2) What representations did LMCP in fact make?

(3) Did LMCP have a reasonable basis for making such claims? [3]

(4) Were the advertisements false and misleading in any respect?

(5) Should the parent corporation Litton Industries, Inc. be held responsible for the acts of the LMCP division of its subsidiary Litton Systems, Inc.?

(6) What is the proper scope of the order, if any, to be issued?

The hearing on the case-in-chief commenced on September 17, 1979 and was concluded on October 5. After additional discovery by complaint counsel, respondents' defense case was presented between November 5 and November 21, 1979. Rebuttal and surrebuttal hearings were held on January 21 and 22, 1980. The record was closed on March 7, 1980. In total, nine witnesses testified on behalf of complaint counsel and 258 Commission exhibits were introduced into evidence. An additional nine witnesses testified on behalf of the respondents and 37 respondent exhibits were introduced into evidence. The hearings consumed a total of 27 trial days and 4633 pages of transcript.

This initial decision is based upon the entire record including proposed findings of fact and conclusions of law and supporting memoranda filed by the parties, as well as their replies. I have also taken into account my observation of the witnesses who appeared before me and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do

not necessarily represent complete summaries of the evidence supporting each finding. The following abbreviations have been used:

- Tr. - Transcript, preceded by the name of witness and followed by the page number.
- CX - Complaint Counsel's Exhibit, followed by its number and the referenced page(s).
- RX - Respondents' Exhibit followed by its number and the referenced page(s).
- CPF - Complaint Counsel's Proposed Findings. [4]
- CPFM - Memorandum in Support of Complaint Counsel's Proposed Findings.
- RPF - Respondents' Proposed Findings.
- CRB - Complaint Counsel's Reply Brief.
- RRB - Respondents' Reply Brief.
- LMCP - Litton Microwave Cooking Products, a division of Litton Systems, Inc.
- Litton - As used herein refers to LMCP.

## FINDINGS OF FACT

### I. THE RESPONDENTS

1. Litton Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 360 North Crescent Drive, Beverly Hills, California (Ans. Par. One). Litton Systems, Inc., is a wholly-owned subsidiary of Litton Industries. Its executive office and principal place of business is located at the same address as Litton Industries, Inc. (Ans. Par. One, Adm. 7/5/79, No. 328). Litton Microwave Cooking Products is a division of Litton Systems. (Respondent's Memorandum in Opposition to Complaint Counsel's Motion for Partial Summary Decision, April 6, 1979, pp. 4 and 8.)

2. Litton Industries, Inc., is a large, conglomerate corporation with numerous diversified products and a worldwide operation. (*Litton Industries, Inc.*, 85 F.T.C. 333, 337.) In 1969 it was ranked as the 39th largest industrial corporation in the United States, with nearly half of its growth attributable to over 100 acquisitions made since 1953, and had sales totalling \$1.9 billion (85 F.T.C. at 337-38, 378).

3. Respondent Litton Systems through its Litton Microwave Cooking Products Division is now, and for some time in the past has

been, engaged in the manufacture, distribution, advertising, and sale of various products including microwave ovens (Ans. Par. Two).

4. Respondent Litton Systems, through LMCP, causes the said products, when sold, to be transported from their place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Said respondent maintains, and at all [5]times mentioned herein has maintained, a course of trade in said products in and affecting commerce. The volume of business in such commerce has been and is substantial (Ans. Par. Three).

5. In the course and conduct of said business, Respondent Litton Systems, through LMCP, has disseminated and caused the dissemination of advertisements for microwave ovens manufactured by Litton, by various means in or affecting commerce, including magazines and newspapers distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said microwave ovens (Ans. Par. Four).

6. In the course and conduct of the aforesaid business, and at all times mentioned herein, respondent Litton Systems, through its Litton Microwave Cooking Products Division has been and is now in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of microwave ovens of the same general kind and nature as those sold by Litton (Ans. Par. Twelve).

## II. THE ADVERTISEMENTS AND THE REPRESENTATIONS

### A. *The Advertisements Were Widely Disseminated.*

7. The complaint in the present case was issued by the Commission with regard to a series of advertisements for Litton microwave ovens, based upon the results of two surveys of the opinions of purportedly independent consumer and commercial microwave oven service technicians. The national advertisements based upon these surveys appear in the record as CX 1, 2, 3, 4 and 6. These ads were disseminated in two separate campaigns, one occurring from October 1976 through February 1977 and the second from August through October of 1977 (CX 8; Interr. No. 61).

8. During the first campaign, ads for consumer microwave ovens (CX 1 and 2) were disseminated in the *Wall Street Journal*, *Better Homes and Gardens*, *Newsweek*, *Sunset*, and *Time* magazine, as well as in 27 different newspapers in cities across the country, including Atlanta, Boston, Chicago, Cleveland, Dallas, Detroit, Ft. Worth,

Houston, Ft. Lauderdale, Jacksonville, Miami, Orlando, Los Angeles, Minneapolis, New York, Newark (New Jersey), San Francisco, San Jose, Santa Ana, St. Paul, St. Petersburg, and Tampa (CX 8 and 9; Interr. No. 61; Ans. Par. Six). The consumer ad also was disseminated in two consumer trade magazines (CX 8 and 9). Ads for commercial microwave ovens (CX 4) were disseminated in eight trade publications directed toward the restaurant business, fast food [6]outlets, and institutions such as hospitals (CX 8; CX 12; Interr. No. 61; Ans. Par. Seven).

9. During the second ad campaign, in 1977, an ad for consumer microwave ovens (CX 3) was disseminated in *HFD Retailing Home Furnishings* (CX 8; Ans. Par. Six). Ads for commercial microwave ovens (CX 6) were published in five trade magazines, primarily directed toward the restaurant business (CX 8; CX 13; Ans. Par. Seven).

10. In addition to the national advertisements based on the service technician surveys, there were at least 109 local advertisements (106 print and 3 radio), based on the Litton surveys and placed by Litton microwave oven dealers (CX 14-25, 27-51, 54-71, 73-80, 82-84, and 86-128; summarized in CX 132). The advertising copy (referred to by Litton as advertising "slicks") upon which these local ads were based was disseminated by LMCP to its dealers and distributors in 1976 and 1977, with the suggestion that the dealers insert their own names and place the ads in the local media (Adm. 9/13/79, Nos. 261 and 262; Interr. No. 52; CX 289). At least 41 of these local ads were paid for in part or in total by Litton under its cooperative advertising program (CX 132; CX 148 O-R). These local advertisements were run between September 1976 and February 1978 in newspapers and advertising circulars, as well as on some radio stations, in cities and communities in at least 26 states across the country (CX 132). Many of the local advertisements which were published in late 1977 were still based on the original Litton advertisement copy (CX 48, 59, 101-104, 108, 112, 113) and some of these were paid for, in part, by LMCP (CX 132).

11. CX 239D is a table entitled "Survey Among Independent Service Agents" indicating that the Litton survey of service agencies revealed a preference for Litton in certain respects over named competitive brands. This table was provided to district and regional managers and distributors<sup>1</sup> at an annual sales meeting in Lake Geneva at some time prior to August 2, 1976 (CX 239A). This table was reproduced exactly in a local advertisement published in the

<sup>1</sup> LMCP distributed its ovens throughout most of the United States through 54 independent distributors who sold, in turn, to the individual retailers within their areas (Houserman, Tr. 2769-71).

Williamsport Sun Gazette on September 21, 1976 (CX 128; Niemasik, Tr. 1035-44). This [7] reveals that the information distributed at the Lake Geneva meeting was passed on to retailers through the Litton sales network.

12. A nine-page report of the results of the commercial technician survey, entitled "A Study of the Attitudes of Independent Commercial Microwave Oven Service Technicians Toward Brands of Commercial Microwave Ovens" was distributed by Litton at the National Restaurant Association Show in 1976 (CX 270; Tr. 1079).

13. Through the means described in Findings 10 through 12, above; the dissemination of advertising "slicks" to dealers and distributors, information supplied to district and regional managers and distributors at the Lake Geneva meeting, the dissemination of the report of the commercial oven survey at the National Restaurant Association Show, and Litton's participation in the cooperative advertising program; Litton provided the instrumentality to its distributors and dealers to make the representations referred to below.

14. CX 152, a four-page report of the consumer technician survey results, entitled "Consumer Service Agency Survey," is one version of a document intended to be used as a mailing piece to be sent to those persons requesting "complete survey results" as invited in the consumer survey advertisements (CX 308K-L; CX 1, 2 and 3). CX 178, a four-page report of the results of the commercial technician survey, entitled "Commercial Service Agency Survey," also was prepared as a mailing piece to be sent to persons requesting "complete results," as invited in the commercial survey advertisements (Adm. 7/5/79, No. 137; CX 308R; CX 4 and 6).

#### *B. The Consumer Oven Advertisements*

15. In CX 1 (Appendix A), the headline reads: "Quality is No. 1 at Litton!" The sub-head of this ad states: "76% of the independent microwave oven service technicians surveyed\* recommend Litton." In the body of the ad, under a caption asserting that "Litton leads all brands," there is a chart containing percentage preference figures obtained from the survey of technicians servicing consumer microwave ovens. Litton is favored over all other brands on every point of comparison, and in most of the 20 comparisons the preference figure for Litton is greater than 50%. In the final column, showing the average preference for Litton over all competitors, the preference figure for Litton exceeds 50% in all categories. In the text of the ad, Litton highlights two of the statistics from the chart: "Among

