

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

----- X

THE UNIVERSITY OF ILLINOIS FOUNDATION,

Plaintiff and
Counterclaim Defendant,

-against-

BLONDER-TONGUE LABORATORIES, INC.,

Defendant and
Counterclaimant,

-against-

JFD ELECTRONICS CORPORATION,

Counterclaim Defendant.

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Civil Action
No. 66 C 567

Examination before trial of the defendant
and counterclaimant BLONDER-TONGUE LABORATORIES,
Inc., by HARRY GILBERT, held at the offices of
Messrs. Ostrelenk, Faber, Gerb & Soffen, 10 East
40th Street, New York, N. Y., on February 7, 1967,
at 10 o'clock A.M., pursuant to notice and

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subsequent adjournment, before Isaac H. Shapiro,
a Notary Public of the State of New York.

A p p e a r a n c e s:

**MESSRS. HOFGREN, WEGNER, ALLEN, STELLMAN &
McCORD,**
Attorneys for Defendant and Counterclaimant,
By: **JULIUS E. FOSTER, ESQ.,**
Of Counsel and Local Solicitor,
420 Lexington Avenue,
New York, N. Y.

MESSRS. SILVERMAN & CASS,
Attorneys for Counterclaim Defendant,
By: **MESSRS. OSTROLENK, FAHER, GERS & SOFFEN,**
(Jerome M. Berliner), of Counsel,
10 East 40th Street,
New York, N. Y.

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IT IS HEREBY STIPULATED AND AGREED

by and between the respective parties hereto that
the transcript of the record of the within deposi-
tion may be subscribed and sworn to by the
witness before any officer legally authorized to
administer an oath with the same force and effect
as if subscribed and sworn to before a Clerk or
Justice of this Court.

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HARRY GILBERT, called as a witness,
being first duly sworn by the Notary Public, testi-
fied as follows:

MR. FOSTER: I desire to place on record
certain facts:

I am of counsel and local solicitor here in
New York and my function here as local solicitor
is merely to initiate local process such as
might be necessary, such as notices of examina-
tion or subpoenas which under local rules of
the District Court require the signature of a
local member of the Bar.

The attorney for the defendant and counter-
claimant, Blonder-Tongue Laboratories, Inc.,
is Robert H. Rines, of Boston, Massachusetts,
who is not here present today and who alone is
fully acquainted with all of the intricate details
of this case.

Prior commitments of Mr. Rines made it
necessary for him to be in London, England on Monday,
February 6, 1967, the date for which this examina-
tion of Blonder-Tongue Laboratories, Inc. was
noticed by JFD Electronics Corporation.

The schedule of Mr. Rines provided that he
would return to New York today, February 7th

Gilbert

and his plane is scheduled to arrive about 9:10 this evening.

I am informed that the Court in this case, before passing on an objection to this notice of examination of Blonder-Tongue Laboratories, Inc. by the counterclaim defendant, JFD Electronics Corporation, was told that I was fully acquainted with the details of this case and presumed otherwise fully adequate to take care of what might be necessary as an attorney attending this deposition.

Apparently on the basis of what was told to the Court, the Court felt that the absence of Mr. Rines would not be serious and that my presence would be adequate to protect Blonder-Tongue Laboratories, Inc. in connection with this examination and deposition.

Since my connection with the case is not of a full attorney, and since I am not fully acquainted with all the details of this case which I have already indicated are intricate, I personally and on behalf of Blonder-Tongue Laboratories, Inc. enter an objection for the use of Blonder-Tongue Laboratories, Inc. in this case

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2 to the enforced requirement of Blender-Tongue
3 Laboratories, Inc. to be present at this examina-
4 tion without the presence of its attorney.

5 While I appreciate the problems that the
6 Court may be imposing on me whom it does not know,
7 I do feel that the Court was not fully informed
8 and to that extent was misinformed about my
9 ability to adequately take care of what might
10 be necessary and cannot be foreseen in connection
11 with an examination in a case of this kind.

12 Specifically I make the objection that the
13 Court's order that Blender-Tongue Laboratories,
14 Inc. submit itself to examination at this time
15 without the presence of its attorney was an abuse
16 of judicial discretion.

17 EXAMINATION BY MR. BERLINER:

18 Q Mr. Gilbert, please state your full name
19 and address for the record.

20 A Harry Gilbert, 108 Wilshire Drive, Cranford, New
21 Jersey.

22 Q What is your occupation?

23 A I am the general manager of Blender-Tongue Labora-
24 tories, Inc.

25 Q What are your duties as general manager?

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A Supervision of various departments of Blender-Tongue Laboratories, Inc.

Q Does Engineering report to you?

A No.

Q Does Sales report to you?

A Sales reports to me.

Q Does Advertising report to you?

A Well, that is part of Sales.

Q Are you acquainted with Blender-Tongue's sales efforts in connection with marketing of TV and FM antennas?

A Yes.

Q Have you had any contact with Blender-Tongue's customers in this connection?

A Infrequently. I am in the home office mostly.

Q Do any Blender-Tongue employees report to you about their contacts with customers?

A The Director of Marketing, yes.

Q Who is that?

A Richard Helhoski.

Q Do you have occasion to speak to anyone else in the Sales Department concerning antenna sales?

A When they come in off a road trip we will have a meeting of Mr. Helhoski and the field men to discuss

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2 a field trip as a result of any problems or anything
3 of significance.

4 Q Is it then correct to say that if your field
5 men run into any problems that you would be advised
6 of that?

7 A I would say most.

8 Q And in connection with trips made by your
9 field men in their attempts to sell TV and FM antennas
10 have there arisen any problems because of activities
11 of JFD Electronics Corporation, the counterclaim
12 defendant herein?

13 A Yes.

14 Q Please explain those difficulties.

15 A Well, we had a report back that we were not able
16 to sell some customers because of a patent that JFD
17 had on their antenna and before the customers would
18 buy, at least the ones I knew about, we had to give them
19 a letter of indemnification.

20 Q Is that the only difficulty you found out
21 about?

22 A That is the major one that comes to mind.

23 Q Are there any others that come to mind?

24 A Not at the moment. Can I hold that off for a few
25 minutes?

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Q Do you believe you have any records in your office to refresh your recollection on this matter?

A Well, these are with my field men personally.

Q These letters are with your field men. Is that to say you do not have copies?

A With me I have nothing.

Q In your own files do you have copies?

A Letters would rarely be addressed to me. They would be addressed to the Director of Marketing and on rare exceptions I would get a report direct to me.

Q Do you recall the names of these customers who you have been required to give indemnity letters to?

A Allied Radio, Radio Electric. This is to the best of my recollection.

I know we had problems but whether I gave a letter to Radio Electric in Philadelphia I am not sure. I know they raised the problem and there is one customer out in California whose name I don't recall. It might be Altshuler. I don't know if I gave a letter of indemnification to these people or not.

MR. BERLINER: These people Mr. Gilbert was referring to was Sacramento Electric Supply in Sacramento.

Q Do you recall the names of your field men

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who have made reports to you that JFD had threatened your customers with suit?

A Jerry Balash.

Q Any others?

A I would say Graham Sisson. I would say those are the two that come to mind right now.

Q How about Jerry Gahn?

A To the best of my recollection Jerry Gahn, if he raised the point, never brought it to me or to Richard Helheski.

Q How about John Linneman?

A To the best of my recollection by the time John Linneman joined us I no longer was getting this kind of information.

I could be wrong. I don't believe there are any letters of indemnification given out from me under July or August. Again, that is my recollection.

Q Have you received any reports that JFD has refused to sell JFD antennas unless the customers also buy auxiliary equipment such as converters or amplifiers?

A Yes. To my recollection not in writing. I don't recall a written report on it but we have had much discussion on it.

Q Who was present at these discussions?

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A It would be Richard Helheski and Jerry Balash and at this point I can't be sure but perhaps John Linnaman in a subsequent period.

Q Do you recall seeing any written documents relating to this subject?

A No.

Q Have you ever discussed this subject with any Blonder-Tongue customers or potential customers?

A Personally, no.

Q Have you ever received any reports that JFD salesmen had refused to sell JFD antennas to Blonder-Tongue customers unless they stopped buying Blonder-Tongue products?

A I have heard talk but again I don't recall any written report.

Q You do not recall seeing any written report?

A No. I will check my files with this specific question in mind, but I don't recall.

Q Do you recall the names of any Blonder-Tongue customers that were involved in such allegations?

A No.

Q Do you recall the names of any Blonder-Tongue customers or potential customers who were involved in any allegations concerning JFD's requirement that they

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would not sell antennas unless other products of JFD were also purchased by the customer?

A I would be guessing at this point. No. There are names that I know of JFD accounts that we have had contact with but I can't be sure that it is in response to your specific question.

Q What position does Graham Sisson have with your company?

A He was at that time the regional sales manager in the southeast territory of the United States. He is now in the western territory.

Q Is he a Blonder-Tongue employee?

A Yes.

Q Do you know his address?

A San Jose; that's all I know.

Q California?

A Right.

Q Was Graham Sisson reporting to Jerry Balash?

A No, he reports to Richard Helkoski.

Q Would you say Mr. Sisson's position was on the level with that of Jerry Balash?

A No. I would say it is one notch below.

Q Do you know of any instances where JFD sought to induce Blonder-Tongue customers to drop the

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3 **Blonder-Tongue line by offering special promotions?**

4 **A Personally, no.**

5 **Q Have you received any reports of such activi-**
6 **ties on the part of JFD?**

7 **A I don't recall any written reports on it.**

8 **Q How about oral reports?**

9 **A Oral reports I have heard.**

10 **Q Who gave you these reports?**

11 **A Jerry Balash.**

12 **Q Anyone else?**

13 **A It would be Jerry Balash with Richard Helcoski**
14 **or Jerry Balash sent in to me or Richard Helcoski.**

15 **Q Do you know of any customers concerned with**
16 **these matters?**

17 **A No.**

18 **Q Do you have any records to indicate the identity**
19 **of the customers concerned?**

20 **A The records would all be either the reports that**
21 **we have on file or the files that Jerry Balash had**
22 **kept, copies that he had, and they are no longer on the**
23 **premises.**

24 **Q Do you know who has those files?**

25 **A They disappeared the week he left.**

Q Who made the decision for Blonder-Tongue

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to go into the antenna business?

A I would say Mr. Blonder.

Q Were you consulted at that time?

A The way I am with any other product line that we have to look into potential.

Q Is it true to say that before a decision was made to go into the antenna field you had conducted or had an investigation conducted to determine the potential of the market?

A Yes.

Q What was the result of that investigation?

A The antenna field was a good field to go into.

Q When was the decision made to go into the antenna field by Blonder-Tongue?

A I would put it probably about 1962.

Q How soon after this decision was made did Blonder-Tongue start showing antennas to the field?

A To the best of my recollection probably in 1963. We came out with the Golden Dart and the Golden Arrow. I am not sure of these dates.

Q Was it the feeling of Blonder-Tongue that by entering the antenna field that the sales of related products would be improved?

A Yes.

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Q In fact, have the sales of related products improved since the entry into the antenna field by Blender-Tongue?

A I would say yes. With the exception of cyclical fluctuations the answer is yes.

Q Have the improvements lived up to your expectations?

A On related products or the antenna?

Q On related products first.

A As to related products we were going along pretty much on forecast. I would say with related products, yes.

Q How about antennas?

A No.

Q Do you know a former JFD employee named Mort Leslie?

A No.

Q If he has not been employed by Blender-Tongue has Mr. Leslie done any work on behalf of Blender-Tongue?

A Absolutely, as a consultant.

Q Please be specific about the type of consultant work Mr. Leslie has done.

A We gave Mr. Leslie an assignment to review the antenna field and to recommend to Blender-Tongue the

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2 types of antennas that he felt in his opinion was needed
3 to be in effect a competitor and to recommend policies.
4 That was specifically the assignment, and to make a
5 complete analysis of all competitive lines in the field.

6 Q Did Mr. Leslie contact customers on behalf of
7 Blonder-Tongue?

8 A Yes, some.

9 Q When did Mr. Leslie and Blonder-Tongue first
10 discuss the consulting arrangement between them?

11 A Perhaps, going by recollection, somewhere in
12 September and October, 1966.

13 Q Prior to that time had there been any contact
14 between Mr. Leslie and Blonder-Tongue?

15 A No, I had never met Mr. Leslie. I had seen him
16 at one of his shows and that was the extent of my contact
17 with him.

18 Q Did Mr. Leslie advise Blonder-Tongue of
19 sales methods used by JFD?

20 A Specifically, I would say no, general, yes.

21 MR. FOSTER: What is that answer?

22 THE WITNESS: The specific methods used, no.

23 In general, yes, because in general we had gone
24 through every competitive manufacturer on the same
25 basis.

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2 Q So I take it you know the general method
3 JFD uses in connection with its sales of antennas?

4 A Generally, yes.

5 Q Is this general method any different from the
6 general method that Blonder-Tongue uses?

7 A Yes, very much so.

8 Q Would you point out the differences, please?

9 A Well, basically Blonder-Tongue is a one-price
10 house in that we, by custom, practice, policy, sell
11 all customers off a price sheet that is printed.

12 We have one deal for everybody and there is no
13 wheeling and dealing, as it is called, in the
14 industry.

15 Basically once we evolve a pattern, this
16 pattern is national. The difference between
17 Blonder-Tongue and JFD, as I understand it, is that
18 with JFD there is a lot of flexibility in the hands
19 of the salesman to make deals on the spot with dif-
20 ferent deals to different customers depending on what
21 it takes to sell, to get the order.

22 Q And you gleaned this from Mr. Leslie's
23 discussions?

24 A Most from Mr. Balash's discussions.

25 Q Are there any other general differences

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2 between the business methods of JFD and Blonder-Tongue?

3 A On direct knowledge, no.

4 Q How about indirect knowledge?

5 A Indirect, I have had all kinds of reports given
6 to me, deals of all kinds and threats to customers.

7 Q Please be specific. Mention names, places.

8 A I can't. I don't have any. That is why I said
9 I don't have any direct knowledge. If I had the names
10 and places I would give them to you.

11 Q Did Mr. Leslie supply you with the names of any
12 JFD customers?

13 A To me directly, no, and I have no knowledge if he
14 supplied any names to Blonder-Tongue.

15 Q Is Mr. Leslie still used as a consultant by
16 Blonder-Tongue?

17 A Yes.

18 Q Has Mr. Leslie completed his review of the
19 antenna field for Blonder-Tongue?

20 A The first part. We don't have a final report.

21 Q Has Mr. Leslie completed his analysis of com-
22 petitive antennas?

23 A I would say so.

24 Q Has he made recommendations as to the parts
25 of antennas which can best be sold by Blonder-Tongue?

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A Yes.

Q Now, as for the analysis of competitive antennas, is that a written report?

A I do not know. Actually, I would like to change that to I don't remember. I have a part of the report but I just don't recall.

The major portion that I recall is the section I was interested in which is the recommendation as to what Blonder-Tongue should be making rather than all the supporting data. I just don't recall whether that is in the report.

Q What was Jerry Balash's position with Blonder-Tongue?

A From beginning to end?

Q Well, let us say at the beginning of 1966 until the end.

A At the beginning of 1966 Jerry Balash was the distributor of products, product manager.

Q Did his position change from the beginning of 1966 until the time when he terminated employment?

A It did.

Q Be more specific.

A On approximately May 9 we put a new man on to handle the antenna portion of the distributor products in an

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2 attempt to put a greater emphasis on the antennas and
3 to give Jerry Balash more time and adequate time to
4 handle other devices, Blonder-Tongue boosters and con-
5 verters.

6 Q Is it then accurate to say that after the new
7 man was hired in May of 1966 that Mr. Balash's respon-
8 sibility with respect to Blonder-Tongue's antennas was
9 just nominal, if at all?

10 A Nominal is the word.

11 Q Was Jerry Balash the organizer of Blonder-
12 Tongue's complete antenna business? I am paraphrasing
13 from the counterclaim.

14 A No.

15 Q Who was the organizer of Blonder-Tongue's
16 antenna business?

17 A It would be Richard Helheski.

18 Q Was there ever a time when Mr. Balash was the
19 sole and key executive in Blonder-Tongue's antenna
20 business. A Yes.

21 Q When was that time?

22 A When we introduced our Ranger series of antennas.

23 Q When was that?

24 A To the best of my recollection somewhere around
25 August through October, 1965. Somewhere in that area.

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2 Q At that time was he the sole and key executive
3 or the sole executive? Was he ever the sole executive?

4 A No, not the sole executive. He was the product
5 manager in charge of antennas but he reported to a
6 Director of Marketing and he couldn't make the decisions
7 himself.

8 Q Prior to the time when Mr. Balash advised
9 Blonder-Tongue that he was terminating employment did
10 he ever express any dissatisfaction to you with his
11 position at Blonder-Tongue?

12 A Frequently.

13 Q Did he ever advise that he was looking around
14 for another position?

15 A From the very earliest part of his career with
16 Blonder-Tongue this was a repetitive refrain.

17 Q Did he ever ask you to explore the possibility
18 of making him a representative for Blonder-Tongue's
19 products?

20 A He may have in the last couple of weeks when he
21 was with us. I think so.

22 Q Was this prior to his notification that he
23 was terminating employment?

24 A I couldn't say.

25 Q In your earlier testimony I believe you

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indicated that certain files disappeared about the time Jerry Balash left?

A That's right.

Q Can you be specific as to what those files were?

A We maintain at Blonder-Tongue letters and books which are chronological carbon copies of all correspondence of key executives and the letter books were not there some time during the week following Jerry Balash's departure. His successor couldn't locate them.

Also the files in the desk drawer, in the four-drawer file in the product manager's area had a number of empty folders and one of the major reports, a six-month IBM report for the six months ending April 30, 1966 giving a breakdown by customer, address and product line, was not available and the Weingard catalog and price sheets, we had two copies in the product manager's area, the week following his departure, one of those copies had disappeared.

Q You say "the week following."

A He left, I believe, on the 29th and in the next succeeding few days when the area was reviewed to see what was there these things were missing.

Q Have any of these documents shown up since?

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A No.

Q You said the letter books contain carbon copies of correspondence of key executives:

Did they just include letters sent from Blender-Tongue or the correspondence received from customers or from third parties?

A The correspondence from the one executive to all parties inside Blender-Tongue and all third parties outside Blender-Tongue.

It is a complete file of any memorandum he dictated during his stay at Blender-Tongue.

Q Would the letter books also have copies of incoming mail?

A No.

Q Then I take it all incoming mail is still on the Blender-Tongue premises insofar as it is relevant to what we are talking about?

A Insofar as it is relevant and if it was not filed in one of the special files for action.

Q When you say letter books were missing I get the impression that there are many letter books, a different one for each executive?

A There is a different one for each executive and each executive may generate in his period with us.

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Q Specifically what letter books were missing?

A The Jerry Balash letter books and approximately three or four of them.

Q Were the letter books of any other executives missing?

A Not to my knowledge.

Q And as for the files in the product manager's area, do you know whether or not the empty folders had contained anything?

A No, I do not.

Q Do you now have a copy of the six-month IBM report you have referred to in your previous answer?

A We always had extra copies. It is the product manager's copy that was missing.

Q Did anyone but Mr. Balash have access to the product manager's copy?

A I would say yes.

Q Did anyone but Mr. Balash have access to the letter books including Mr. Balash's letter books?

A Yes, the same as the books over here on the shelf.

Q Was Mr. Balash given advance notice that a new man had been hired to handle antenna products?

A I don't know.

Q Did you so advise Mr. Balash?

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A No, I did not.

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Q Have you had any conversations with Sidney Love concerning JFD activities in the antenna field?

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A Not to my recollection.

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Q Have you had any conversations with any personnel at Radio Electric Service Company in Pennsylvania concerning JFD's activities in the antenna field?

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A No.

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Q The same questions with respect to Dan Levine of Leder?

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A The question is on JFD, the answer is no.

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Q How about anyone at Thurew Electronics in Florida?

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A No.

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Q Do you have any documents that you believe would be relevant with respect to the antitrust counterclaim being asserted by Blender-Tongue in this litigation?

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MR. FOSTER: I think that is a question that you should hardly ask him. Those would be legal matters. How would he know whether it is pertinent, a legal matter, especially an antitrust paper?

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MR. BERLINER: I just asked him if he knows.

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MR. FOSTER: I don't think he would be in a

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position to say. It involves an opinion.

MR. BERLINER: He has a belief at this point.
Are you objecting to this question.

MR. FOSTER: Yes. It gets beyond the range
of an executive to know whether these documents
are in an antitrust complaint.

MR. BERLINER: Please answer the question.

THE WITNESS: The first document or first paper
that comes to my mind is a report that I wrote
when I came back from Boca Raton Country Club
in October or November, 1965 where I was at breakfast
with my men and Ed Finkel was sitting at a table
by himself and he called me over and let me know that he
was aware that we were going into the antenna business
and he was going to give me some pointers on basic deals
on the price of antennas and the one point that he did
make was that the special promotion or introductory
deal that we had to try to get customers to buy
was the kind of deal that the other antenna manufacturers
go into during the slow summer months and as the fall
season starts they discontinue these deals and start
selling at full price and it would be to our best
interest to stop the deal and start selling full
price and in this way everybody would be able to con-

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2 tinus selling at the full price during the height
3 of the season and then revert to deals when business
4 slacked off.

5 Q Any other documents you are aware of of this
6 nature?

7 A Well, that is one that I created. The one I had
8 Jerry Balash make a phone call to California and I don't
9 remember the name of the customer and I could be wrong
10 on that. Jerry came in, I believe, and told me about
11 the phone call and I had Jerry record the gist of the
12 phone call for me so that I would have it in my files.

13 Q Are you referring to a document that has been
14 marked BT-54? 604-2

15 A Yes.

16 Q Do you recall any other documents of this
17 nature?

18 A I believe there are several. I don't recall them.

19 Q Will you go to your files and get all these
20 documents that you believe to be relevant to the anti-
21 trust counterclaim and submit them to your attorney for
22 transmission to us?

23 A Yes.

24 Q Do you know of any customers that Blonder-
25 Tongue has lost because of the activities of JPD?

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A No.

Q Do you have any specific instances where the good will of Blender-Tongue has been impaired by the activities of JFD?

A No.

Q What is the nature of Blender-Tongue's special promotion that you have been referring to?

A The introductory promotion, if I recall correctly, was giving one free antenna for every 12 bought.

Q Does Blender-Tongue use any special promotion sales methods during the so-called slack season in the summer?

A Basically our promotions and sales efforts are year around. If we are giving one for 12 it is pretty much throughout the year. We haven't seen fit to vary it to offer one deal in the summertime and another one in the wintertime so we have been relatively consistent.

Q Using the word "relatively," where were the inconsistencies?

A The inconsistencies were only that we might go two for 12 and offset the cost of co-op advertising for the cost of an antenna; just trading some promotion dollars but that we have a promotion going at all times that is fairly stable.

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2 Q Is a promotion of one form or another offered
3 at all times?

4 A Yes.

5 Q Do you ever ship goods on consignment?

6 A Yes, converters only. I assume when you say "con-
7 signment" you don't mean a sample of one or two pieces.

8 Q I am referring to a standard order where title
9 does not change.

10 A Right. My answer stands.

11 Q Is there any standard credit period that is
12 used in the industry?

13 A I don't follow that.

14 Q When a bill is sent is it supposed to be paid
15 within 30 days or is there any other time?

16 A Which industry are you talking about?

17 Q We are talking about sales by a manufacturer
18 such as Blender-Tongue to a distributor.

19 A Our normal terms are two per cent, 10th and 25th,
20 net 30.

21 Q Did you ever extend the period beyond 30 days?

22 A For specific promotions we will and by product line
23 we will.

24 Q What determines whether the extension will be
25 beyond the 30-day period?

A The time of the year and what the usual practice of

1
2 competition is.

3 Q Is this standard procedure with your competi-
4 tors to extend the normal payment period?

5 A On antennas, yes.

6 Q How about converters?

7 A For a new market you will have it on converters
8 and for an existing market the normal terms prevail.

9 Q Who are the major competitors of Blender-
10 Tongue in the TV and FM antenna field?

11 A It would be Weingard, Channelmaster, JFD and
12 Finney.

13 Q Do you believe these four companies are the
14 largest in the field?

15 A Throw Taco in there and I believe we have them
16 covered.

17 Q From the information available to you have
18 you made any determination as to which of the five com-
19 panies you have named does the most business in the
20 antenna field?

21 A In relative spending I think I have a feel
22 for it. I would be going by recollection.

23 Q Would you try to recall which of the five you
24 named was the largest?

25 A I think I would put Channel Master first.

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Q How about number two and so on?

A Also a matter of changing patterns --

MR. FOSTER: Are you asking now opinions of what he thinks? It doesn't seem to have any bearing on the case. What difference does it make what he thinks is the standing of competitors. It gets into a field of questions and answers where they are meaningless.

MR. BERLINER: Off the record.

(Discussion off the record.)

MR. BERLINER: Please answer the question.

MR. FOSTER: I am objecting to this question or to even this type of question because what you are trying to do is make the witness some sort of commercial expert with his opinions rather than facts that are related to the issues so what he thinks about the standing of these competitors is not an issue in this case and has no bearing and it doesn't lead to any information that would be helpful under the rules.

MR. BERLINER: Please answer the question.

MR. FOSTER: I direct the witness not to answer the question.

Q Has Blonder-Tongue made a determination as to

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which of the five competitors you have named is the largest in the antenna field?

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A I would say Elonder-Tongue as at this point does not have anything in front of me to let me know what we determined. I don't know personally.

5

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Q Do you know if there is a document to set forth that determination?

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A I am pretty sure there must be.

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Q Would you please find that document and transmit it to your attorneys for submission to us?

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A Yes.

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MR. FOSTER: Let me say that for all these documents they will be produced to the extent that they are available and submitted to the attorneys and then the question of whether they are pertinent and will be delivered to you will be considered and taken up as a matter of advisement and we will inform you whether or not we have them and whether we will deliver them to you for the purposes of this case.

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MR. BERLINER: I have no further questions of the witness subject to the production of those documents.

25

MR. FOSTER: You are closing the examination

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2 with this witness subject to the production
3 of the documents you asked for?

4 MR. BERLINER: Yes.

5 MR. FOSTER: Since the other two witnesses
6 who were to appear today appear to have been
7 held in somewhere where they cannot get to this
8 deposition in time for today's deposition, I sug-
9 gest that they be made available to you since we
10 must assume that conditions would be sufficiently
11 improved so that they can travel here.

12 I think the record should show that we
13 have blizzard conditions which have been
14 declared so by the Weather Bureau and that the
15 snow has been piled up on the streets of New York
16 and all the roads leading to New York to create
17 a condition of difficult travel.

18 MR. BERLINER: If conditions clear up by
19 tomorrow so that we are able to conduct depo-
20 sitions, I would like the witness Balash to be
21 the first to be examined.

22 MR. FOSTER: That is satisfactory to us
23 subject however to this condition:

24 Mr. Rines who is on his way presumably from
25 London now and should arrive here at 9:15

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2 is the attorney who will be conducting the examina-
3 tion of Mr. Balash when he appears.

4 I do not know about this case to properly under-
5 take the examination of Mr. Balash and I am sure
6 that the Court would not order me to do so if
7 the Court were fully advised of the situation.

8 Therefore, I agree with you and I stipulate
9 to this extent that if Mr. Rines will arrive this
10 evening as we expect and hope and is available
11 here tomorrow morning at the time of the examina-
12 tion which we have noticed, we will examine
13 Mr. Balash first so that he may be free to leave
14 since that is what you desire and do you fix any
15 further time on the question of whether Mr.
16 Finkel would be available?

17
18 MR. BERLINER: As far as I know Mr. Finkel
19 will be available. However, I would like to
20 examine Messrs. Kalhoski and Cohn prior to
21 Mr. Finkel's examination. I suggest that we leave
22 those details up in the air.

23 MR. FOSTER: We can decide that tomorrow
24 morning. Let us hope that everybody will be here
25 and we will decide then how to proceed.

As of today, as of now this hearing

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you are closing.

MR. HERLINER: It is being adjourned.

Subscribed and sworn to before me
this day of 1967.

1
2 STATE OF NEW YORK)
3 COUNTY OF NEW YORK) SS
4

5 I, Isaac H. Shapiro, a Notary Public duly
6 commissioned and qualified in and for the County of
7 Kings, State of New York, do hereby certify that
8 pursuant to notice there came before me the fol-
9 lowing person, to wit, Harry Gilbert, who was by me
10 duly sworn to testify to the truth and nothing but
11 the truth of his knowledge touching and con-
12 cerning the matters in controversy in this cause;
13 that he was thereupon carefully examined upon
14 the interrogatories submitted and his examina-
15 tion reduced to writing under my supervision;
16 that the deposition is a true transcript of the
17 record of the testimony given by the witness;

18 I further certify that I am neither
19 attorney nor counsel for, nor related to or
20 employed by any of the parties to the action in
21 which this deposition has been taken, and
22 further that I am not a relative or employee of
23 any attorney or counsel employed by the parties
24 hereto, or financially interested in the action.
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IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 15th day
of February 1967.

Isaac H. Shapiro

ISAAC H. SHAPIRO
Notary Public of the
State of New York
No. 24-3813000
Commission expires
March 30, 1967
