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FILED

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7 981-4850

8 Attorneys for Defendants

JAMES P. WELSH, Clerk

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 JOHN P. MAGUIRE & CO., INC.,  
13 a corporation,

14 Plaintiff

15 -vs-

16 CONTINENTAL T. V., INC.,  
17 a corporation; A & G SALES,  
18 a corporation; SYLPAC, INC.,  
19 a corporation; JOHN DOE CO.,  
20 GEORGE N. SHAHOOD and  
21 MARGARITHA H. SHAHOOD,

22 Defendants.

NO. 44251

ANSWER, COUNTERCLAIM  
AND CROSS-CLAIM

23 Comes now Defendants, Continental T. V., Inc., a  
24 corporation; A & G Sales, a corporation; Sylpac, Inc., a  
25 corporation; S.A.M. Industries, a corporation, sued in the  
26 within action as John Doe Co.; George N. Shahood and Margaritha  
27 H. Shahood, and in answer to the complaint on file herein,  
28 admit, deny and allege as follows:

29 FIRST CAUSE

30 I

31 For answer to Paragraph IV, Defendants, and each of them,  
32 deny each and every allegation contained in said paragraph,  
except admit: (1) that demand for payment of certain  
sums was made by Plaintiff; and (2) further admit that

1 Defendants did not hold proceeds of sale of trust merchandise  
2 separate and apart from other funds of Defendants, but allege  
3 that Defendants, and each of them, were not required to hold  
4 such proceeds separate from other funds of Defendants and allege  
5 that Plaintiff, for a period in excess of fourteen (14) months  
6 was aware of the fact that proceeds of sale of trust merchandise  
7 were not being held separate by Defendants, or any of them,  
8 from other funds of Defendants, and further allege that Plain-  
9 tiff made no demand on Defendants that such proceeds be  
10 held separate and apart.

11 II

12 For answer to Paragraph V, Defendants deny each and every  
13 allegation contained therein, except admit that Plaintiffs  
14 cancelled the trusts, and all of them, and further admit that  
15 Defendants, on October 7, 1965, held Sylvania merchandise  
16 in their possession. Defendants, allege, however, that the  
17 merchandise so held on said date, subject to trust receipts,  
18 amounted to approximately \$84,000 and that all such  
19 merchandise was repossessed on October 13, 1965, by the U.S.  
20 Marshal for the benefit of Plaintiff and Sylvania Electric  
21 Products, Inc.

22 III

23 For answer to Paragraph VI, Defendants deny each and every  
24 allegation contained therein.

25 IV

26 For answer to Paragraph VII, Defendants deny each and every  
27 allegation contained therein and in particular deny that  
28 there is now due and owing Plaintiff the sum of \$169,186.79,  
29 or any other sum.

30 SECOND CAUSE

31 I

32 For answer to Paragraph II, Defendants deny that on



1 October 1, 1965, or any other date, there was an account  
2 stated between Plaintiff and Defendants in the total amount  
3 of \$169,186.79 or any other sum and further specifically  
4 deny that there remains due and owing from Defendants to  
5 Plaintiff any sum whatsoever.

6 THIRD CAUSE

7 I

8 For answer to Paragraph II, Defendants re-allege and  
9 incorporate herein by reference Paragraphs I, II, III and  
10 IV of Defendants' answer to first cause as though completely  
11 and more fully set forth herein at length.

12 II

13 For answer to Paragraph III, Defendants deny each and  
14 every allegation contained therein, except admit that on the  
15 dates, alleged, Defendants George N. Shahood and Margaritha  
16 H. Shahood entered into the written contracts of guaranty  
17 attached to the complaint marked Exhibit "D". Defendants  
18 further specifically deny that Defendants George N. Shahood  
19 and Margaritha H. Shahood owe Plaintiff the sum of \$130,000  
20 or any other sum.

21  
22 AS AND FOR A FURTHER AND SEPARATE DEFENSE BY WAY OF  
23 COUNTER CLAIM, DEFENDANTS, CONTINENTAL T. V., INC.:

24 A & G SALES, SYLPAC, INC., AND S.A.M. INDUSTRIES ALLEGE:

25 FIRST COUNTER CLAIM

26 I

27 Each of said Defendants is a corporation organized and  
28 existing under and by virtue of the laws of the State of  
29 California, having its principal place of business in and  
30 transacting business in the State of California, under the  
31 firm name and style of "Continental T.V." Each of said  
32 Defendants has filed and published the necessary fictitious

1 name certificates for the transaction of business under the  
2 firm name and style of Continental T. V., pursuant to  
3 the provisions of Section 2466 et seq. of the California Civil  
4 Code. Unless otherwise noted, Defendants hereinafter will be  
5 referred to collectively as "Continental".

6 II

7 On or about July 3, 1965, Sylvania Electric Products, Inc.  
8 contracted to sell to Continental merchandise in the sum of  
9 approximately \$63,600 to be manufactured and shipped by  
10 Sylvania to the retail stores of Continental. On or about  
11 August 27, 1965, Sylvania further contracted with Continental  
12 for the sale of merchandise in the sum of \$112,377.96 for ship-  
13 ment to said stores.

14 III

15 That subsequent to August 27, 1965 and prior to September  
16 13, 1965, Plaintiff wrongfully and without justification or  
17 excuse induced Sylvania Electric Products, Inc. to refuse  
18 to perform the above described contracts.

19 IV

20 As a direct and proximate result of the acts of Plaintiff  
21 Sylvania, in fact, refused to ship approximately eighty-eight  
22 percent (88%) of the merchandise required by the contract of  
23 July 3, 1965 and further refused to sell and ship any part  
24 of the merchandise required by the contract of August 27, 1965.

25 V

26 As a direct and proximate result of the above described  
27 wrongful conduct by Plaintiff in inducing breach by Sylvania  
28 of said contracts, Continental has suffered damage in excess of  
29 \$84,000, representing loss of profit from the resale of  
30 merchandise which Sylvania has failed and refused to ship to  
31 Continental.



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merchandise, under trust receipts and not in violation thereof, in the approximate sum of \$84,000. As a direct and proximate result of the wrongful conduct of Plaintiff as described in Paragraph IV above, Continental has suffered damage in excess of \$40,000 for loss of profit from the resale of Sylvania merchandise wrongfully repossessed by Plaintiff from Continental.

CONTINENTAL T. V., INC., a  
corporation; Sylpac, Inc.,  
a corporation, and S.A.M.  
Industries, Inc.,

Cross-Claimants,

-vs-

JOHN P. MAGUIRE & CO., INC.,  
a corporation, and Sylvania  
Electric Products, Inc., a  
corporation, and Does 1  
through 25.

Cross-Defendants.

CROSS-CLAIM FOR  
RESTRAINT OF TRADE,  
BREACH OF CONTRACT  
AND DAMAGE TO  
BUSINESS AND PROPERTY.

Continental T. V., Inc., A & G Sales, Sylpac, Inc. and  
S.A  
S.A.M. Industries, hereinafter referred to collectively as  
"Continental", as and for a cross-claim allege:

FIRST CAUSE

I

This cause of action arises under the Anti-Trust Laws of the United States, more particularly the Sherman Anti-Trust Act, 15 USC Sections 1 and 2, as hereinafter more fully appears.

II

The true names or capacities, whether individual, corporate, associate, or otherwise, of Cross-Defendants named herein as Does 1 through 25 are unknown to Cross-Claimants, who therefore sue said Cross-Defendants by such fictitious names, and Cross-Claimants will amend this Cross-Claim to show their true names and capacities and to more fully charge



1 said ~~fictitious~~ Cross-Defendants when the same shall have  
2 been ascertained.

3 III

4 Cross-Claimants, and each of them are corporations duly  
5 organized and existing under and by virtue of the laws of the  
6 State of California, each having its principal place of  
7 business in and transacting business in the State of California.  
8 Each Cross-Claimant has filed and published the necessary  
9 fictitious name certificates to transact business under the  
10 fictitious name and style of "Continental T. V., as required  
11 by the provisions of the California Civil Code.

12 IV

13 John P. Maguire & Co., Inc., hereinafter referred to as  
14 "Maguire", and Sylvania Electric Products, Inc., hereinafter  
15 referred to as "Sylvania", are corporations with their  
16 principal places of business in the State of New York and  
17 have qualified to do business in the State of California.

18 The amount in controversy exclusive of costs and interest  
19 exceeds the sum of Ten Thousand Dollars (\$10,000).

20 V

21 During the period March 19, 1964 to July 13, 1964,  
22 Continental purchased from Sylvania television receivers,  
23 radios, high fidelity reproducers and accessories, supplies,  
24 replacement parts and related products, hereinafter referred  
25 to throughout as "Television Products", in the total sum of  
26 \$13,548.91. Said purchases by Continental from Sylvania  
27 were on open account payable in cash within 90 days after pur-  
28 chase. Prior to March 19, 1964, Continental had no dealings  
29 whatsoever with Sylvania.

30 VI

31 On July 14, 1964, Continental operated two retail stores,  
32 one at 3585 Stevens Creek Blvd., Santa Clara, Calif., and one  
at 2160 E. 14th St., San Leandro, Calif.

VII

On or about May 29, 1964, Sylvania proposed to Continental that the purchase of Sylvania television products be financed by Maguire through the "Maguire Flooring Plan". Continental rejected the proposal. On or about June 29, 1964, Sylvania proposed and urged that Continental expand its retail operation into new trade areas in Northern California. Sylvania advised and informed Continental that expansion could not be carried out unless Continental acquired an adequate amount of credit and that credit in such amount could only be obtained through the Maguire Flooring Plan. Continental again refused to accept the said plan of Maguire.

VIII

On or about July 14, 1964, in order to increase the extent of its market area in Northern California, Continental agreed to finance the purchase of Sylvania television products exclusively through Maguire.

IX

During the period March 19, 1964 to July 14, 1964, Sylvania granted Continental credit to a maximum sum of \$10,000 for a maximum period of 90 days. On or about July 14, 1964, Sylvania and Maguire verbally granted to Continental credit for the purchase of Sylvania television products to a maximum sum of \$30,000 for a maximum period of six months. Thereafter, the credit granted to Continental was periodically increased by Sylvania and Maguire as follows:

<u>Maximum Amt.</u>	<u>Maximum Time</u>	<u>Date Granted</u>
\$60,000	six months	July, 1964
\$100,000	six months	August, 1964
\$250,000	six months	October, 1964
\$300,000	six months	November, 1964
\$350,000	six months	June, 1965

X

During the period March 19, 1964, through September 22,



1 1965, Sylvania and Maguire induced Continental to expand its  
2 retail sales facilities in Northern California. As a direct  
3 and proximate result of said inducement, Continental estab-  
4 lished major volume retail stores engaged in the sale and  
5 servicing of Sylvania television products at the following  
6 locations on or about the following dates:

7	<u>Store Location</u>	<u>Opening Date</u>
8	982 E. Santa Clara	
9	San Jose, Calif.	May 22, 1964
10	1021 Earl St.	
11	San Jose, Calif.	July 31, 1964
12	3210 Geary Blvd.	
13	San Francisco, Calif.	September 1, 1964
14	2415 Mission St.	
15	San Francisco, Calif.	September 20, 1964
16	1555 Laurelwood	
17	San Jose, Calif.	March 1, 1965
18	542 Lake Park Drive	
19	Oakland, Calif.	March 1, 1965
20	924 So. Main	
21	Salinas, Calif.	March 15, 1965
22	177 W. Santa Clara	
23	San Jose, Calif.	May 1, 1965
24	1870 Fulton Ave.	
25	Sacramento, Calif.	September 8, 1965

26 Except for the store located in Sacramento, all the above  
27 listed retail stores and those operated by Continental on  
28 July 14, 1964 were approved by Sylvania for the volume resale  
29 of Sylvania television products.

30 XI

31 During the period July 14, 1964 through September 13,  
32 1965, Continental ordered television products from Sylvania  
to be financed by Maguire in an amount in excess of One  
Million Dollars (\$1,000,000).

XII

During the period July 15, 1963, through July 14, 1964,

1 Continental derived gross receipts from the sale of television  
2 products purchased from all manufacturers, including Sylvania,  
3 in the approximate sum of Three Hundred Ninety-Six Thousand  
4 Dollars (\$396,000). Of that total, approximately three  
5 percent (3%) was derived from the sale of Sylvania television  
6 products.

7 During the period July 15, 1964, through July 15, 1965,  
8 Continental derived gross receipts from the sale of television  
9 products purchased from all manufacturers, including Sylvania,  
10 in excess of One Million One Hundred Twenty-Four Thousand  
11 Dollars (\$1,124,000). Of said total, approximately fifty-  
12 seven percent (57%) was derived from the sale of Sylvania  
13 television products.

14 During the period July 15, 1964 through July 15, 1965,  
15 Sylvania induced Continental to expend in excess of One  
16 Hundred Thirty-Two Thousand Dollars (\$132,000) in advertising  
17 and promoting Sylvania television products throughout  
18 Northern California.

19 XIII

20 During the period March 19, 1964 through July 15, 1965,  
21 Continental was not an authorized dealer for any manufacturer  
22 which produced and sold television products in competition with  
23 similar products manufactured and sold to Continental by  
24 Sylvania.

25 On or about July 15, 1965, Continental was appointed an  
26 authorized and approved dealer for the purchase and resale of  
27 television products produced by Philco Corporation, which  
28 purchases were to be financed by Philco Finance Corporation.

29 XIV

30 That of the total orders by Continental from Sylvania of  
31 television products referred to in Paragraph XI above, approx-  
32 imately \$63,600 thereof was ordered on or about July 3, 1965  
for immediate shipment to Continental, which merchandise



1 was to be financed by Maguire. The said order was approved  
2 and accepted by Sylvania and Maguire.

3 Of said total orders, approximately One Hundred Twelve  
4 Thousand Dollars (\$112,000) was ordered by Continental on  
5 or about August 27, 1965, with approximately Fifty-Six  
6 Thousand Six Hundred Dollars (\$56,600) to be shipped  
7 immediately and the balance of approximately Fifty-Five  
8 Thousand Six Hundred Dollars (\$55,600) to be shipped on or  
9 about October 10, 1965. The said order was approved and  
10 accepted by Sylvania and Maguire.

11 XV

12 On or about August 1, 1965, Continental leased real  
13 property and improved same for the purpose of operating therein  
14 a major retail store in Sacramento, California, for the volume  
15 retail sale of Sylvania and Philco Television products.

16 On or about September 1, 1965, Sylvania demanded that  
17 Continental refrain from doing business in Sacramento,  
18 California.

19 XVI

20 Continental opened the retail store in Sacramento, Calif-  
21 ornia on or about September 8, 1965 and from and after said  
22 date engaged in the volume sale of television products manu-  
23 factured by Sylvania, Philco and other manufacturers competitive  
24 therewith.

25 XVII

26 On or about September 13, 1965, and as part of the total  
27 orders referred to in Paragraph XI above, Continental ordered  
28 from Sylvania television products to be financed by Maguire in  
29 the approximate sum of Seventy Thousand Dollars (\$70,000) for  
30 immediate shipment to and resale in the Sacramento retail  
31 store of Continental.

XVIII

That on September 8, 1965 and for a number of years prior thereto, a corporation, partnership and/or sole proprietorship controlled by Keith Anderson operated one or more stores for the retail sale of television products in Sacramento, California, under the firm name and style, and hereinafter referred to as, "Handy Andy".

Continental is informed and believes and upon such information and belief alleges, that Handy Andy, at all times mentioned herein, derived annual gross receipts in excess of Five Hundred Thousand Dollars (\$500,000) from the sale in Sacramento, California, of television products purchased from Sylvania and financed by Maguire.

XIX

That from and after July 15, 1965, Maguire, Sylvania and Does 1 through 25:

(1) Refused to ship to Continental approximately eighty-eight percent (88%) of Sylvania television products ordered on or about July 3, 1965.

(2) Refused to ship any part of the television products ordered by Continental on or about August 27, 1965;

(3) Refused, on or about September 3, 1965, to appoint the Sacramento retail store of Continental as an authorized and approved Sylvania dealer;

(4) Demanded on or about September 1, 1965, that Continental refrain from doing business in Sacramento, Calif.

(5) Refused to accept, approve or finance the Continental order of September 13, 1965 for Sylvania television products to be offered for resale in Sacramento, California;

(6) Reduced, on or about September 16, 1965 the maximum amount of credit granted to Continental for the purchase



1 of Sylvania television products from Three Hundred Fifty  
2 Thousand Dollars (\$350,000) to Fifty Thousand Dollars  
3 (\$50,000).

4 (7) On October 12, 1965, through Plaintiff, instituted  
5 the within action to recover the entire purchase price for  
6 all Sylvania television products in the possession of  
7 Continental, which balance of purchase price was not then due  
8 and owing by Continental to Plaintiff.

9 (8) (On October 13, 1965, pursuant to the action of  
10 Plaintiff, through the Office of the United States Marshal,  
11 wrongfully caused all Sylvania television products to be  
12 physically removed from each retail store of Continental.

13 (9) Pursuant to the action of Plaintiff, through the  
14 United States Marshal, wrongfully caused said Marshal to chain and  
15 lock the main retail store of Continental located at 3585  
16 Stevens Creek Blvd., Santa Clara, California, the retail store  
17 at 177 W. Santa Clara Ave., San Jose, California, and the  
18 central warehouse located at 1555 Laurelwood, Santa Clara,  
19 California.

20 (10) Wrongfully attached the primary commercial account of  
21 Continental located at Crocker Citizens National Bank,  
22 San Jose, California.

23 (11) Attempted to induce Philco Credit Corporation to  
24 refuse to do business with Continental with respect to the  
25 financing of television products purchased from Philco  
26 Corporation.

27 (12) On October 13, 1965, withdrew approval of Con-  
28 tinental as an authorized and approved Sylvania dealer in  
29 Northern California.

30 (13) Refused to sell to Continental for cash Sylvania  
31 television products.

1 XX

2 Each of the acts described in Paragraph XIX above was  
3 carried out pursuant to an agreement, combination and/or  
4 conspiracy among Sylvania, Maguire and Does 1 through 25,  
5 with the intent and purpose of:

6 (1) Preventing Continental from expanding its trade area  
7 into Sacramento, California.

8 (2) Preventing Continental from competing with Handy  
9 Andy in the sale of Sylvania television products in Sacramento,  
10 California.

11 (3) Preventing Continental from selling in competition  
12 with Sylvania dealers in Sacramento, California, television  
13 products manufactured by companies other than Sylvania.

14 (4) Preventing Continental from selling in competition  
15 with Sylvania dealers throughout Northern California, television  
16 products manufactured by companies other than Sylvania.

17 XXI

18 That the acts of Sylvania, Maguire and Does 1 through 25  
19 were carried out in furtherance of an agreement, combination  
20 and/or conspiracy for the purposes described in paragraph XX  
21 above and constituted a restraint of interstate trade and  
22 commerce prohibited by Sections 1 and 2 of the Sherman Anti-  
23 Trust Act, causing damage to the public and substantial actual  
24 damage to Continental.

25 XXII

26 That since August 15, 1965, and continuing to a date in  
27 the future not now ascertainable, consumer demand in Northern  
28 California for color television sets has exceeded and will  
29 continue to exceed the supply of such product available from  
30 all manufacturers, distributors, and/or dealers. That as a  
31 direct and proximate result of the consumer demand, it became  
32 necessary for Sylvania to allocate to its approved dealers,



1 the number of color television sets available to each dealer  
2 for purchase and resale during the period September 1, 1965  
3 through December 31, 1965. Prior to October 13, 1965,  
4 Sylvania determined that Continental was entitled to purchase  
5 during the aforesaid period a minimum of 544 color television  
6 sets. Continental is informed and believes, and under such  
7 information and belief alleges, that by reason of existing  
8 and future market conditions, Sylvania would have allocated  
9 to Continental a minimum of 500 additional color television  
10 sets for each three-month period from and after January 1,  
11 1966 to a date not now ascertainable.

12 XXIII

13 By reason of existing and future market conditions,  
14 Continental cannot presently purchase nor will it be able in  
15 the future to purchase color television sets from any manu-  
16 facturer, distributor and/or dealer to replace those sets  
17 removed by Maguire and Sylvania pursuant to the within action,  
18 those sets allocated by Sylvania to Continental for the  
19 period September 1, 1965 through December 31, 1965, and those  
20 which would have been allocated by Sylvania to Continental  
21 thereafter.

22 XXIV

23 That during the period the consumer demand in Northern  
24 California for color television sets exceeds the supply of  
25 such product available from all manufacturers, distributors  
26 and/or dealers, Continental will be able to sell approximately  
27 5,000 color television sets in excess of those that Continental  
28 can now or will in the future be able to obtain from any and  
29 all manufacturers, distributors and/or dealers.

30 XXV

31 That as a direct and proximate result of the illegal,  
32 agreement, combination and conspiracy in restraint of inter-

1 state commerce as hereinbefore alleged, Sylvania, Maguire  
2 and Does 1 through 25 have caused actual damage to Continental  
3 as follows:

4 (1) Approximately One Hundred Fifteen Thousand Dollars  
5 (\$115,000) as and for loss of profit on the resale by  
6 Continental of Sylvania television products ordered by Con-  
7 tinental on July 3, 1965, August 27, 1965 and September 13,  
8 1965, which said merchandise was not shipped to Continental  
9 by Sylvania.

10 (2) Approximately Forty Thousand Dollars (\$40,000) as and  
11 for loss of profits on the resale of Sylvania television  
12 products wrongfully repossessed on October 13, 1965.

13 (3) Approximately One Hundred Seventy-Five Thousand  
14 Dollars (\$175,000) as and for loss of profit on the resale of  
15 Sylvania television products allocated for sale to Continental  
16 during the period September 1, 1965 through December 31, 1965.

17 (4) Approximately 1.2 Million Dollars as and for estimated  
18 loss of profit on the resale of color television sets which  
19 Continental cannot now or will in the future be able to obtain.  
20 Continental requests leave to amend this cross claim to plead  
21 the exact amount of damages incurred in the future when the  
22 same shall have been ascertained.

23 By reason of the foregoing, Continental has incurred and  
24 will in the future incur total actual damage in the sum of  
25 One Million Five Hundred Thirty Thousand Dollars (\$1,530,000)  
26 and is entitled therefore to threefold damages in the sum of  
27 Four Million Five Hundred Ninety Thousand Dollars (\$4,590,000)  
28 plus a reasonable attorney's fee.

29 SECOND CAUSE

30 I

31 This cause of action arises under a law to protect intra-  
32 state trade and commerce, and in particular, Section 16720



1 of the Business and Professions Code of the State of California.

2 II

3 Cross-Claimants incorporate herein by reference as  
4 though fully set forth at length Paragraphs II, III, IV, V,  
5 V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII,  
6 XVIII, XIX and XX of their first cause for cross claim.

7 III

8 That the acts of Sylvania, Maguire and Does 1 through 25  
9 were carried out in furtherance of an agreement, combination  
10 and/or conspiracy for the purposes described in Paragraph XX  
11 of Cross-Claimants first cause for cross claim and con-  
12 stituted a restraint of intrastate trade and commerce  
13 prohibited by Section 16720 of the Business and Professions  
14 Code of the State of California, causing damage to the public  
15 and substantial actual damage to Continental.

16 IV

17 Cross-Claimants incorporate herein by reference as though  
18 fully set forth at length the allegations of paragraphs XXII,  
19 XXIII and XXIV of their first cause for cross claim.

20 V

21 That as a direct and proximate result of the illegal  
22 agreement, combination and conspiracy in restraint of intra-  
23 state commerce as hereinbefore alleged, Sylvania, Maguire  
24 and Does 1 through 25 have caused actual damage to Continental  
25 as follows:

26 (1) Approximately One Hundred Fifteen Thousand Dollars  
27 (\$115,000) as and for loss of profit on the resale by Con-  
28 tinental of Sylvania television products ordered by Con-  
29 tinental on July 3, 1965, August 27, 1965 and September 13,  
30 1965, which said merchandise was not shipped to Continental  
31 by Sylvania.

32 (2) Approximately Forty Thousand Dollars (\$40,000) as and

1 for loss of profits on the resale of Sylvania television  
2 products wrongfully repossessed on October 13, 1965.

3 (3) Approximately One Hundred Seventy-Five Thousand  
4 Dollars (\$175,000) as and for loss of profit on the resale of  
5 Sylvania television products allocated for sale to Continental  
6 during the period September 1, 1965 through December 31,  
7 1965.

8 (4) Approximately 1.2 million dollars as and for estimated  
9 loss of profit on the resale of color television sets which  
10 Continental cannot now or will in the future be able to obtain.  
11 Continental requests leave to amend this cross claim to plead  
12 the exact amount of damages incurred in the future when the  
13 same shall have been ascertained.

14 By reason of the foregoing, Continental has incurred  
15 and will in the future incur total actual damage in the sum  
16 of One Million Five Hundred Thirty Thousand Dollars (\$1,530,000)  
17 and is entitled under the provisions of Section 16750  
18 of the Business and Professions Code of the State of California  
19 to threefold damages in the sum of Four Million Five Hundred  
20 Ninety Thousand Dollars (\$4,590,000) plus a reasonable attorney's  
21 fee.

### 22 THIRD CAUSE

#### 23 I

24 Cross-Claimants incorporate herein by reference as though  
25 fully set forth at length each and every allegation contained  
26 in paragraphs II, III, IV, XIV, XIX, (1) and XIX (2) of  
27 their first cause for cross claim.

#### 28 II

29 Continental, at all times mentioned, fully performed all  
30 terms, covenants and conditions required of it under the  
31 agreements of July 3, 1965 and August 27, 1965 for the purchase  
32 of Sylvania television products.



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III

That as a direct and proximate result of the failure by Sylvania to perform said agreements, Continental has suffered damage in the sum of Eighty-Four Thousand Dollars (\$84,000) as and for loss of profit on the merchandise which Sylvania failed and refused to ship to Continental.

FOURTH CAUSE

I

Cross-Claimants incorporate herein by reference as though fully set forth at length each and every allegation contained in paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, and XXIV of their first cause for cross claim.

II

Sylvania, Maguire and Does 1 through 25 willfully and maliciously conspired to damage and injure the business and property of Continental.

III

As a direct and proximate result of the intentional and malicious acts of said cross-defendants in furtherance of said conspiracy, Continental has suffered damage as follows:

(1) Approximately One Hundred Fifteen Thousand Dollars (\$115,000) as and for loss of profit on the resale by Continental of Sylvania television products ordered by Continental on July 3, 1965, August 27, 1965 and September 13, 1965, which said merchandise was not shipped to Continental by Sylvania.

(2) Approximately Forty Thousand Dollars (\$40,000) as and for loss of profits on the resale of Sylvania television products wrongfully repossessed on October 13, 1965.

(3) Approximately One Hundred Seventy-Five Thousand Dollars (\$175,000) as and for loss of profit on the resale of

1 Sylvania television products allocated for sale to Continental  
2 during the period September 1, 1965 through December 31, 1965.

3 (4) Approximately 1.2 million dollars as and for estimated  
4 loss of profit on the resale of color television sets which  
5 Continental cannot now or will in the future be able to obtain.  
6 Continental requests leave to amend this cross claim to plead  
7 the exact amount of damages incurred in the future when the  
8 same shall have been ascertained.

9 IV

10 As a result of the malicious and willful acts of cross-  
11 defendants, Continental is entitled to an award of punitive  
12 damages in the sum of Five Million Dollars (\$5,000,000).

13 FIFTH CAUSE

14 I

15 Cross-Claimants incorporate herein by reference as though  
16 fully set forth at length each and every allegation contained  
17 in paragraphs II, III, IV, V, VII, VIII, IX, X, XI, XII,  
18 XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII and  
19 XXIV of their first cause for cross claim.

20 II

21 Sylvania willfully and maliciously caused damage and  
22 injury to the business and property of Continental.

23 III

24 As a direct and proximate result of the intentional and  
25 malicious acts of Sylvania, Continental has suffered damages  
26 as follows:

27 (1) Approximately One Hundred Fifteen Thousand Dollars  
28 (\$115,000) as and for loss of profit on the resale by  
29 Continental of Sylvania television products ordered by Con-  
30 tinental on July 3, 1965, August 27, 1965 and September 13,  
31 1965, which said merchandise was not shipped to Continental  
32 by Sylvania.



1 (2) Approximately Forty Thousand Dollars (\$40,000) as and  
2 for loss of profits on the resale of Sylvania television  
3 products wrongfully repossessed on October 13, 1965.

4 (3) Approximately One Hundred Seventy-Five Thousand  
5 Dollars (\$175,000) as and for loss of profit on the resale of  
6 Sylvania television products allocated for sale to Continental  
7 during the period September 1, 1965 through December 31, 1965.

8 (4) Approximately 1.2 million dollars as and for estimated  
9 loss of profits on the resale of color television sets which  
10 Continental cannot now or will in the future be able to obtain.  
11 Continental requests leave to amend this cross claim to plead  
12 the exact amount of damages incurred in the future when the  
13 same shall have been ascertained.

14 IV

15 As a result of the malicious and willful acts of  
16 Sylvania, Continental is entitled to an award of punitive  
17 damages in the sum of Five Million Dollars (\$5,000,000).

18 WHEREFORE, Continental prays judgment as follows:

19 (1) That Plaintiff take nothing by its action on file  
20 herein.

21 (2) That Continental be awarded against Maguire the sum  
22 of One Hundred Twenty-Six Thousand Dollars (\$126,000) under  
23 its counter claim.

24 (3) That Continental be awarded against Sylvania, Maguire  
25 and Does 1 through 25 the sum of Four Million Five Hundred  
26 Ninety Thousand Dollars (\$4,590,000), plus additional damages  
27 according to proof and a reasonable attorney's fee under its  
28 first cause for cross claim herein.

29 (4) That Continental be awarded against Sylvania, Maguire  
30 and Does 1 through 25 the sum of Four Million Five Hundred  
31 Ninety Thousand Dollars (\$4,590,000), plus additional damages  
32 according to proof and a reasonable attorney's fee under its

1 second cause for cross claim herein.

2 (5) That Continental be awarded against Sylvania the  
3 sum of Eighty-Four Thousand Dollars (\$84,000) under its  
4 third cause for cross claim herein.

5 (6) That Continental be awarded against Sylvania,  
6 Maguire and Does 1 through 25 the sum of One Million Five  
7 Hundred Thirty Thousand Dollars (\$1,530,000) in actual damages  
8 and the sum of Five Million Dollars (\$5,000,000) in punitive  
9 damages under its fourth cause for cross claim herein.

10 (7) That Continental be awarded against Sylvania the  
11 sum of One Million Five Hundred Thirty Thousand Dollars  
12 (\$1,530,000) in actual damages and the sum of Five Million  
13 Dollars (\$5,000,000) in punitive damages arising out of its  
14 fifth cause for cross claim herein.

15 (8) For costs of suit incurred herein.

16 (9) For such other and further relief as the Court may  
17 deem proper.

18 Dated: November 22, 1965.

19  
20 SIDNEY RUDY, WAYNE H. WHITE  
21 RICHARD N. RAPOPORT  
22 HAROLD J. SIEGEL

23 GLENN E. MILLER

24 By: Wayne H. White  
25 Attorneys for Defendants and  
26 Cross-Claimants  
27  
28  
29  
30  
31  
32



1 VERIFICATION

2 State of California }  
3 City and County of San Francisco } ss.

4  
5 Webster F. Allen, being duly sworn, deposes and  
6 says:

7 That he resides at 737 Opal Drive, San Jose,  
8 California; that he is the duly elected and acting President  
9 of Continental T. V., Inc., on of the defendants and cross-  
10 claimants herein; that he has read the foregoing answer,  
11 counterclaim and cross-claim, and knows the contents thereof,  
12 and that the same are true of his own knowledge except as to  
13 matters therein stated to be alleged on information and belief,  
14 and as to those matters, he believes them to be true.

15 Dated: November 19, 1965

16 Webster F. Allen  
17

18  
19  
20 Subscribed and sworn to before me this 19th  
21 day of November, 1965.

22 Selma R. Conlan  
23 Notary Public  
24

25 SELMA R. CONLAN  
26 Notary Public in and for the City and  
27 County of San Francisco, State of California  
28 My Commission Expires July 5, 1969  
29  
30  
31  
32