

IN THE MATTER OF
MOTOOL MACHINE COMPANY, INC. ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5896. Complaint, June 27, 1951—Decision, Mar. 20, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, not marked or not adequately marked showing that they are of foreign origin, or if foreign markings are covered or otherwise concealed, such public understands and believes the articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products, including sewing machine heads, originating in the United States, over products originating in whole or in part in foreign countries.

Where two corporations with a common address, and their two responsible officers and an employee, engaged in the competitive interstate sale and distribution of sewing machine heads imported from Japan, and of complete sewing machines of which said heads were a part, in process of completing which by attachment of a motor the words "Made in Occupied Japan" or "Japan" were covered and no longer visible—

- (a) Failed adequately to disclose on said heads upon the front of some of which there appeared a medallion bearing in small and indistinct words the legend "Made in Occupied Japan" or "Japan" that said products were there made, with the result of placing in the hands of dealers a means to deceive the purchasing public as to their place of origin;
- (b) Falsely represented, through adoption and use of the word "American" as a trade or brand name for said machine heads, and the stamping or printing thereof on the front horizontal arm of the head in large and conspicuous letters, that said products were made in the United States;

With tendency and capacity to lead members of the purchasing public into the erroneous belief that their said products were of domestic origin, and thereby into the purchase of quantities of sewing machines of which said heads were a part, because of such mistaken belief; whereby substantial trade in commerce was unfairly diverted to them from their competitors and substantial injury done to competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. David Lench, of New York City, for respondents.

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 Motool Machine Company, Inc., a corporation, Eval Machine Company, Inc., also a corporation, and Israel Sharenow, Alexander Sharenow, and Evelyn Pakarow, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Motool Machine Company, Inc., and Eval Machine Company, Inc., are corporations organized and existing under and by virtue of the laws of the State of New York with their offices and principal place of business located at 59 East 12th Street, New York, New York. Respondents Israel Sharenow, Alexander Sharenow, and Evelyn Pakarow are President, Treasurer and Secretary, respectively, of said corporate respondents and acting as such officers, formulate, direct and control the policies, acts and practices of said corporations. The address of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Respondents are now and have been for several years last past engaged in the sale of sewing machine heads imported from Japan and completed sewing machines of which said heads are a part. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are purchased by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference of products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 6. Respondents have adopted and use the word "American" as a trade or brand name for the said machine heads and the word is stamped as an impression or printed on the front horizontal arm of the head in large conspicuous letters. The use of the trade name "American" serves as a representation that said product is manufactured in the United States, which is contrary to fact.

PAR. 7. Respondents, by placing in the hands of dealers their sewing machine heads and completed sewing machines, provide said dealers with a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said product.

PAR. 8. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the word "American" as a trade or brand name has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and into the purchase of quantities of sewing machines of which said heads are a part, because of such erroneous and mistaken belief. As a result substantial trade, in commerce, has been unfairly diverted to respondents from their competitors and substantial injury has been done and is being done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of the Compliance", dated March 20, 1952, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in the above-entitled proceeding upon the respondents Motool Machine Company, Inc., a corporation, Eval Machine Company, Inc., also a corporation, and Israel Sharenow, Alexander Sharenow, and Evelyn Pakarow, individually and as officers of said corporations, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On August 22, 1951, respondents filed their answer to said complaint. On October 29, 1951, at a hearing held in New York, New York, counsel for the respondents and counsel in support of the complaint entered into an oral stipulation on the record, wherein counsel for the respondents admitted certain allegations of the complaint to be true; made further admissions regarding the potential testimony of witnesses who could be produced in support of certain other allegations of the complaint; and made qualifying statements in regard to other allegations of the complaint. On November 1, 1951, a letter dated October 30, 1951, from counsel for the respondents, supplementing the previous stipulation was duly incorporated into the record. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner theretofore duly designated by the Commission upon said complaint and answer thereto, stipulation on the record, written supplement thereto, no proposed findings or conclusions having been submitted; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PAR. 1. Respondents Motool Machine Company, Inc. and Eval Machine Company, Inc. are corporations organized and existing under

and by virtue of the laws of the State of New York, with their offices and principal place of business located at 59 East 12th Street, New York, New York. Respondents Alexander Sharenow, Evelyn Pakarow, and Israel Sharenow, individuals, are President, Secretary and Treasurer, and an employee, respectively, of said corporate respondents, and, acting in such capacity, have formulated, directed and controlled the policies, acts and practices of said corporations. The address of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Respondents have been for several years last past engaged in the sale of sewing machine heads imported from Japan and completed sewing machines of which said heads were a part. In the course and conduct of their business respondents have caused their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States, and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in 1950 in the buying and selling of sewing machine heads amounted to approximately 6,000 such heads, which is substantial trade in commerce.

PAR. 3. When the sewing machine heads were purchased by respondents, the words "Made in Occupied Japan" or "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach a motor to the head, in the process of which the aforesaid words were covered by the motor so that they were not visible. In some instances said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appeared. These words were, however, so small and indistinct that they did not constitute adequate notice to the public that the heads were imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked or are not adequately marked showing that they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There are, among the members of the purchasing public, a substantial number who have a decided preference for products, including sewing machine heads, originating in the United States, over products originating in whole or in part in foreign countries.

PAR. 6. Respondents have adopted and used the word "American" as a trade or brand name for the said machine heads, and the word

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was stamped as an impression or printed on the front horizontal arm of the head in large conspicuous letters. The use of the trade name "American" served as a representation that said product was manufactured in the United States, which was contrary to fact.

PAR. 7. Respondents, by placing in the hands of dealers their sewing machine heads and completed sewing machines, have provided said dealers with a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin of said products.

PAR. 8. Respondents, in the course and conduct of their business, were in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately informed the public as to the source of origin of their said product.

PAR. 9. The failure of respondents adequately to disclose on the sewing machine heads that they were manufactured in Japan and the use of the word "American" as a trade or brand name has had the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product was of domestic origin, and into the purchase of quantities of sewing machines of which said heads were a part, because of such erroneous and mistaken belief. As a result, substantial trade, in commerce, has been unfairly diverted to respondents from their competitors, and substantial injury has been done to competition in commerce.

CONCLUSION

The acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Motool Machine Company, Inc., and Eval Machine Company, Inc., corporations, and their officers, and Alexander Sharenow and Evelyn Pakarow, individually and as officers, and Israel Sharenow, individually and as an employee, of said corporations, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in

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the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof;

2. Using the word "American," or any simulation thereof, as a brand or trade name to designate, describe or refer to their sewing machines or sewing machine heads; or representing through the use of any other word or in any other manner that sewing machines or sewing machine heads manufactured in a foreign country are manufactured in the United States.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail and manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 20, 1952].

Syllabus

IN THE MATTER OF
AMERICAN BUSINESS COUNSELORS, INC., ETC. ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5910. Complaint, Aug. 7, 1951—Decision, Mar. 20, 1952

While it may be true, as insisted in the instant case, that the expression "blue ribbon" has come into general acceptance as a symbol of quality, which simply denotes excellence, and not that a product has been adjudged highest in a competitive contest, such a position does not appear tenable where the expression is not used merely as the trade name of a product or in a general way to connote quality, but is used along with such expressions as "awarded the blue ribbon for excellence", and others indicative of highest recognition in a competitive contest with other similar products.

Where a corporation which formerly traded under the name "American Bakers Council", and thereafter as "Independent Bakers Council of America", and its president, engaged in acting as commercial counselors and in the competitive interstate sale of merchandising programs, including advertising and promotional material, to wholesale bakers engaged in the competitive sale of bread—

- (a) Falsely represented the size of their business and the extent of their operations in certain of their advertising material, through referring to their "Midwest Offices" at a Chicago address, and to their "Eastern Offices" at a New York one.

The facts being that while they utilized an independent business or secretarial service at each of said addresses for the purpose of forwarding mail, receiving telephone calls and supplying temporary office facilities to their traveling salesmen, they had never maintained an office of their own in either of said cities; and

Where said corporation and its president, in selling to wholesale bakers, usually to only one in each town, their said sales program, which included suggested advertising for use in newspapers and radio continuities, suggested news stories for use by the local paper, the supplying of "blue ribbon" bands to be placed on the loaves of bread and blue ribbons to be worn by the bakery's salesmen or routemen, and a large blue ribbon to be awarded the baker in a public presentation, usually made by them under the name "American Bakers Council of America", with as much publicity as possible—

- (b) Represented and supplied to others the means of representing that competitive contests were conducted by them or at their instance to determine the relative quality or merit of products of different bakeries, and that a particular product had been awarded a prize or other distinction in such a competitive contest, through such statements in said advertisements, in which a blue ribbon was depicted, as "[name] BREAD CO. WINS FIRST PRIZE AWARD as the *finest* White Bread in the United States FROM AMERICAN BAKERS COUNCIL * * *", and through such statements, following discontinuance of use of the words "FIRST PRIZE", and emphasis upon the award of the "blue ribbon", as "[name] FINE BREAD Awarded the