

IN THE MATTER OF
**LEON ETTINGOFF ET AL. DOING BUSINESS AS GLOBE
MACHINE COMPANY**

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

Docket 5885. Complaint, June 27, 1951—Decision, Apr. 4, 1952

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 markings are covered or otherwise concealed, such purchasing public understands and believes such 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 originating in the United States over products, including sewing machine heads, originating in whole or in part in foreign countries.

Substantial numbers of the purchasing public prefer to deal with concerns which manufacture the products they sell.

Where three partners engaged in the competitive interstate sale and distribution to distributors and retailers of sewing machine heads imported by them from Japan, and of complete sewing machines assembled through attachment of a motor to said imported heads, in which process the words "Made in Occupied Japan" or "Japan" became covered—

- (a) Failed adequately to disclose on said heads that said products were made in Japan, notwithstanding upon the front of some of them there appeared a medallion bearing in small and indistinct words the legend "Made in Occupied Japan" or "Japan";

With the result of placing in the hands of dealers a means whereby they might deceive the purchasing public as to their place of origin; and

- (b) Falsely represented that they owned or controlled a factory or facilities for manufacturing sewing machines or sewing machine heads through use of the word "Manufacturers", as included in the phrase "Manufacturers and Distributors", displayed, along with their trade name, in their advertising;

With tendency and capacity to lead members of the purchasing public into the mistaken belief that their said product was of domestic origin and was made by them, and thereby induce purchase of sewing machines containing said heads; and unfairly to divert substantial trade in commerce to them from their competitors;

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.

1142

Complaint

Before *Mr. James A. Purcell*, hearing examiner.
Mr. William L. Taggart for the Commission.
Goff & Rubin, of Philadelphia, Pa., 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 Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, copartners doing business as Globe Machine Company 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 Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, are copartners doing business under the name Globe Machine Company, with their principal place of business at 5045 Market Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said imported heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. 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 Pennsylvania 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 comemrce has been and is substantial.

PAR. 3. When the sewing machine heads are imported 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 medalion 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 show-

Complaint

48 F. T. C.

ing that they are of foreign origin or if marked and the markings covered or otherwise concealed, such purchasing public understands and believes such 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 originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents, in their advertising, make such statements as the following:

Globe Machine Company, Manufacturers and Distributors.

Through the use of the word "manufacturers" respondents represent that their sewing machine heads and complete sewing machines were manufactured in a factory owned and controlled by them. In truth and in fact, respondents do not own or control a factory or facilities for manufacturing sewing machines or sewing machine heads. Substantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads, and complete sewing machines in which imported heads are a part, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said sewing machine heads.

PAR. 7. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the word "manufacturers" 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 is manufactured by respondents, and to induce members of the purchasing public to purchase sewing machines containing said heads 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 and is being done to competition in commerce.

PAR. 9. 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 Compliance", dated April 4, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, 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 respondents Leon Ettingoff, Edward Ettingoff and Abraham Ettingoff, individually and as co-partners doing business as Globe Machine Company, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On August 31, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Philadelphia, Pennsylvania, October 16, 1951, respondents moved the Hearing Examiner for leave to withdraw the aforesaid answer and to file in substitution thereof an answer admitting all of the material allegations of fact set forth in the complaint, which motion was granted on the record and confirmed by formal order filed herein on October 18, 1951. Such substituted answer reserved to respondents the right and privilege to submit Proposed Findings, Conclusions and Order, as provided by Rule XXI of the Commission's Rules of Practice, and also certain other reservations to respondents not necessary to be here set forth. 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 substitute answer thereto, proposed findings and conclusions not having been submitted on behalf of any party to the proceeding; 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

PARAGRAPH 1. Respondents Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, are copartners doing business under the name Globe Machine Company, with their principal place of business at 5045 Market Street, Philadelphia, Pennsylvania.

Findings

48 F. T. C.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said imported heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. 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 Pennsylvania 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 imported 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 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.

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

PAR. 5. Respondents, in their advertising, make such statements as the following:

Globe Machine Company, Manufacturers and Distributors.

Through the use of the word "manufacturers" respondents represent that their sewing machine heads and complete sewing machines were manufactured in a factory owned and controlled by them. In truth and in fact, respondents do not own or control a factory or facilities for manufacturing sewing machines or sewing machine heads. Sub-

stantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads, and completed sewing machines of which imported heads are a part, provided said dealers a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents, in the course and conduct of their business, were in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they were manufactured in Japan, and the use of the word "manufactured," has 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 was manufactured by respondents, and do induce members of the purchasing public to purchase sewing machines containing said heads 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 and is being done to competition in commerce.

CONCLUSION

The aforesaid 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, Leon Ettingoff, Edward Ettingoff and Abraham Ettingoff, individually and as co-partners doing business as Globe Machine Company, or trading under any other name, and their 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 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

Order

48 F. T. C.

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. Representing, through the use in advertising of the word "manufacturer" or "manufacturers," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

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 the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 4, 1952].

Syllabus

IN THE MATTER OF

NATIONAL COLLEGE OF AUDIOMETRY ET AL.

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

Docket 5917. Complaint, Aug. 17, 1951—Decision Apr. 7, 1952

A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions—such as law, medicine and theology—laboratories, libraries, and dormitories for resident students, with sufficient financial resources to operate and maintain such an institution; and with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered, and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and recognized as such by standard accrediting organizations, which conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

Academic degrees are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions, and, unless so earned and conferred, do not constitute degrees in the accepted meaning of the term. Moreover, degrees granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

Where a corporation and its president, engaged in the interstate sale and distribution of a correspondence course in audiometry or the fitting of hearing aids; in circulars distributed to prospective students, and advertisements in various magazines of national circulation devoted to the healing arts—

(a) Represented, directly or by implication, that said corporation was a recognized and accredited college or institution of higher learning;

The facts being that it had none of the facilities, equipment, or faculty possessed by such institutions, but was operated by said individual who also constituted its faculty;

(b) Represented that said individual was a holder of a number of degrees pertaining to the subject of audiometry; that their course included basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, the physics of sound, abnormal psychology, etiology and pathology of diseases of the ear, and the fitting of hearing aids; and that students might obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry;

The facts being that the degree of "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges and is wholly without validity, and, insofar as said individual was concerned, was conferred by him upon himself; while said individual did possess the earned degree of Doctor of Optometry, and the honorary degree of Doctor of Optometric Science, he was not qualified by training or experience to teach either general anatomy or physiology, or the specific anatomy, physiology and pathology