

Complaint

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IN THE MATTER OF

SEWING MACHINE EXCHANGE, 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 5887. Complaint, June 27, 1951—Decision, Apr. 15, 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 marked and the markings are covered or otherwise concealed, such 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.

Where a corporation and its three officers, engaged in the competitive interstate sale 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" and "Japan" became covered—

Failed adequately to disclose that said heads were made in Japan, notwithstanding the presence upon the front of some of them of a medallion which bore in small and indistinct words the legend "Made in Occupied Japan" or "Japan"; and thereby placed in the hands of dealers a means and instrumentality whereby they might mislead and deceive the purchasing public as to place of origin of said heads;

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 induce purchase of sewing machines of which said heads were a part; whereby trade was unfairly diverted to them from 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.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.

Mr. Leonard L. Creskoff, 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 Sewing Machine Exchange, Inc., a corporation, and Willis Harris, Jerry Fineman and Manual Harris, individually and as officers of said corporation

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. Respondent Sewing Machine Exchange, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 4233-35 Parrish Street, Philadelphia, Pennsylvania. Respondents Willis Harris, Jerry Fineman and Manual Harris are President, Treasurer and Secretary, respectively of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The post office address of the individual respondents is the same as that of the corporate respondent.

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 completed sewing machines of which said 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 now 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 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.

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

PAR. 6. 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 adequately inform the public as to the source of origin of their said products.

PAR. 7. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan 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 to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 8. 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.

ORDERS AND DECISION OF THE COMMISSION

Order denying motion to stay decision of the Commission and decision of the Commission and order to file report of compliance, Docket 5887, April 15, 1952, follows:

The initial decision of the hearing examiner in this proceeding having been filed, and service thereof having been completed on March 15, 1952, and no notice of an appeal having been filed, and the respondents having filed a motion on March 31, 1952, that the Commission stay its decision in this matter until decisions are rendered by the Commission in certain other proceedings; and

It appearing that the grounds relied upon by the respondents in support of said motion are that the initial decision of the hearing examiner was filed prior to the issuance by the Commission of its order permitting the withdrawal of a certification of question to the

Commission by the hearing examiner, and that the respondents are in close competition with the respondents in certain other proceedings pending before the Commission and that a decision adverse to the respondents at this time will prejudice the business interest of the respondents and create an inequitable situation; and

The Commission having duly considered said motion and the record herein and it appearing that the respondents were in no way prejudiced as a result of the hearing examiner having filed his initial decision prior to the issuance by the Commissioner of its order permitting withdrawal of the certification of question and further that there is no sufficient reason to warrant the staying of the decision in this proceeding until decisions in certain other matters have been rendered; and

The Commission being of the opinion that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the motion of the respondents that the Commission stay its decision in this proceeding be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall on the 15th day of April, 1952, become the decision of the Commission.

It is further 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.

Said initial decision, thus adopted by the Commission as its decision, follows:

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 Sewing Machine Exchange, Inc., a corporation, Willis Harris, Jerry Fineman and Manual Harris, individually and as officers of said corporation, charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said Act. On August 20, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Philadelphia, Pennsylvania, on October 24, 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

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granted on the record and confirmed by formal order filed herein on October 26, 1951. Such substituted answer reserved to respondents the right to submit proposed findings and conclusions, 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. Testimony and exhibits were received, which have been retained of record, no motion to strike having been made by any party, which testimony and exhibits are not herein considered because of the filing of the admission answer as above set out. 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 substituted 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. Respondent Sewing Machine Exchange, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 4233-35 Parrish Street, Philadelphia, Pennsylvania. Respondents William (*alias dictus* Willis) Harris, Jerome (*alias dictus* Jerry) Fineman and Emanuel (*alias dictus* Manual) Harris are President, Treasurer and Secretary, respectively of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The post office address of the individual respondents is the same as that of the corporate respondent.

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 completed sewing machines of which said 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 now 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 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.

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

PAR. 6. 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 adequately inform the public as to the source of origin of their said products.

PAR. 7. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan 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 to induce members of the purchasing public to purchase sewing machines of which these heads are a part because of such erroneous and mistaken belief. As a result thereof, trade 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 are all to the prejudice and injury of the public and of respondents'

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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.

ORDER

It is ordered, That the respondents, Sewing Machine Exchange, Inc., a corporation, and its officers, and William (*alias dictus* Willis) Harris, Jerome (*alias dictus* Jerry) Fineman and Emanuel (*alias dictus* Manual) Harris, individually and as officers of said corporation, 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 for sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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.

ORDER TO FILE REPORT OF COMPLIANCE

It is further 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 aforesaid order and decision of the Commission].

Complaint

IN THE MATTER OF

WARREN W. BURGESS ET AL. DOING BUSINESS AS THE
KNOX COMPANYCOMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914*Docket 5881. Complaint, May 16, 1951—Decision, Apr. 18, 1952*

Where three partners engaged in the interstate sale and distribution of a number of medicinal preparations including their "Chinaroid" rectal balm and "Romind" tablets compound for relief of rheumatic aches and pains; in advertising by various means, directly and by implication—

- (a) Falsely represented that said "Chinaroid" constituted an adequate and competent treatment for hemorrhoids and their underlying causes;

The facts being that it would have merely an emollient effect and temporarily relieve symptoms of said conditions in simple cases;

- (b) Falsely represented that use of said preparation would serve to shrink sore, swollen tissues, help nature heal irritated membranes and allay nervousness induced by and accompanying hemorrhoids; and

- (c) Falsely represented that said "Romind" preparation was a competent and effective relief for arthritis, neuritis, rheumatism, swollen joints, neuralgia, sciatica, and lumbago, and would afford permanent relief from pain thereof;

- (d) Falsely represented that it was a fast-acting medicine which brought new hope, happiness and comfort to sufferers from the pain of said conditions;

The fact being that any comfort derived from it would be solely due to the temporary relief of minor pains afforded by its analgesic effect, and it was not fast-acting;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that its said representations were true, and thereby into the purchase of substantial quantities of aforesaid preparations:

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

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, of Washington, D. C., and *Sampson & Dryden*, of Los Angeles, Calif., 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 Warren W. Burgess, Linn D. Johnson and Richard T. Aldworth, copartners doing business under the firm name of The Knox Company, 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