

IN THE MATTER OF

ZONITE PRODUCTS CORPORATION ET AL.

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

Docket 5031. Complaint, Aug. 18, 1943—Decision, Apr. 23, 1952

"Massaging of the gums", as understood by a great majority of the general public from the use of the word in advertisements as meaning a haphazard indiscriminate rubbing of the gums with a toothbrush or finger, either with or without the toothpaste involved in the instant case, is of no value in making soft gums firm or in the prevention or treatment of gingivitis or pyorrhea.

The term "massage" as used by dentists means a careful stroking or squeezing pressure applied to the gums in a particular area to achieve a specific purpose, the proper use of which requires professional instruction.

While the testimony of the expert witnesses in the instant case was conflicting as to the value of massaging the gums, even with professional instruction, the preponderant weight of the qualified dental opinion was that massaging them in the sense of indiscriminate rubbing is of no value and, in some cases, is actually harmful.

Where a corporation engaged in the interstate sale of its "Forhan's Toothpaste", along with its advertising agent, in advertising in newspapers and periodicals and through radio broadcasts, directly and by implication—

- (a) Falsely represented that uninstructed massage of the gums with said toothpaste would help make them firmer;
- (b) Represented that such massage and cleaning the teeth with said toothpaste would protect the user against gingivitis and pyorrhea and was of value in the treatment of the former condition; and
- (c) Represented that by comparison all other toothpastes were "ordinary" and inferior;

The facts being that the sole value of said preparation was as a cleaning agent; use thereof in brushing the teeth was of no value in the treatment of gingivitis, or in the prevention thereof except to the extent that it might help gingivitis caused by accumulation of food particles or other foreign materials in places inaccessible to the toothbrush; preponderant weight of qualified dental opinion was that massaging the gums in the sense of indiscriminately rubbing them was of no value and in some cases was actually harmful; results achieved through the use of their preparation were essentially the same as those achieved through the use of other commercial toothpastes; and it was not extraordinary in the sense that others were inferior;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby to induce a substantial number of the public to purchase said preparation:

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.

As respects the charge of the complaint that respondents had falsely represented that the use of said product would protect teeth against decay by removing from them the acids and acid films which are its cause, the record showed that brushing the teeth with a dentifrice would remove acid film from surfaces accessible to the toothbrush, and that such acid film was one of the causes of tooth decay, and the Commission was of the opinion, upon the record, that these allegations had not been sustained.

As regards the allegations of the complaint that respondents had falsely represented that the use of said toothpaste as a dentifrice would cause the user's teeth to become naturally white, sparkling, bright and lustrous, even though their natural appearance, even when clean and polished, was dull and yellowish: it was believed—notwithstanding the fact that all teeth are not naturally white or brilliant and that said toothpaste would not alter the original color or luster of the teeth though it would, through the removal of film, debris, dirt and surface stains assist in cleaning them—that exaggerations as to the whiteness and luster which would be achieved by the use of a toothpaste, were unlikely to deceive anyone factually, as long as it was clearly stated that it only cleaned teeth to their own natural state, as in the typical representation “cleans dull teeth to their natural white brilliance”; and the Commission, in the absence of evidence to the contrary, found that the allegations of the complaint with respect to said matter had not been sustained.

With respect to the allegations that respondents had falsely represented that large numbers of dentists had for many years recommended said toothpaste for the results claimed by respondents in their advertisement: the record contained no evidence proving that large numbers of dentists had not so recommended, and said allegation was not sustained.

While the Commission considered the fact that the representations found to be false in the instant proceeding were contained in advertisements disseminated prior to the issuance of the complaint and that the record was silent as to whether or not respondents had continued to disseminate similar advertising representations since that time, the Commission also considered the fact that respondents had at no times contended that they were not continuing to so advertise, and had at all times vigorously contended that their said advertisements were proper and legal, and was of the opinion, upon the record, that respondents were likely to so advertise in the future unless prohibited by an order of the Commission; and that, accordingly, the issuance of such an order was required in the public interest.

Before *Mr. John W. Addison*, hearing examiner.

Mr. Randolph W. Branch for the Commission.

Littlefield, Miller & Cleaves, of New York City, for respondents.

Margaret C. Cowley, of New York City, also represented *Erwin, Wasey & Co., Inc.*

Complaint

48 F. T. C.

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 Zonite Products Corporation, a corporation, and Erwin, Wasey & Company, Inc., a corporation, 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondents Zonite Products Corporation and Erwin, Wasey & Company, Inc., are corporations organized under the laws of the State of Delaware, and have their respective offices and principal places of business at Chrysler Building and at 420 Lexington Avenue, city and State of New York.

PAR. 2. Respondent Zonite Products Corporation is now, and has been for several years last past, engaged in the sale of Forhan's Toothpaste, a cosmetic preparation as defined in the Federal Trade Commission Act. Respondent Erwin, Wasey & Company, Inc., has been the advertising agent for respondent Zonite Products Corporation, and has participated in the preparation and dissemination of the advertising matter to which reference is made herein.

Respondent Zonite Products Corporation causes the said toothpaste, when sold, to be shipped and transported from its principal place of business in the State of New York and from its manufacturing plant in the State of New Jersey, to purchasers thereof located in various States other than that of the points of origin of such shipments. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said toothpaste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their businesses, have disseminated and are now disseminating and have caused, and are now causing the dissemination of, false advertisements concerning said Forhan's Toothpaste by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning said Forhan's Toothpaste by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as aforesaid by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities and by other advertising literature, are the following:

Examine your gums closely. Are they tender, sore to the touch? Do they bleed when you brush your teeth? Then any one of these signs may mean that Gingivitis has started its silent work on you. This mild gum inflammation is so common today that four out of five may have it. If care isn't taken—it may lead to Pyorrhea, which only your dentist can help. See your dentist—then at home help guard against Gingivitis with Forhan's Toothpaste and massage. This time tested Forhan method not only helps gums to be firmer—but also brightens dingy teeth to their natural sparkling lustre. Forhan's costs no more than ordinary toothpastes—so why not enjoy its advantages.

If neglected this may lead to dreaded Pyorrhea, which only your dentist can help.

If neglected—Gingivitis may lead to dreaded Pyorrhea, to shrinking gums and loosened teeth which often have to be extracted in the last stages of Pyorrhea.

He was a very successful dentist—and he told me of a great many cases where he had checked gingivitis—and in all those cases Forhan's as a gum massage and toothpaste has worked out fine.

For home defense in helping guard against Gingivitis massage your gums and brush your teeth twice daily with Forhan's Toothpaste—massaging gums to be firmer and for cleaning teeth to their natural brightness—Forhan's—helps remove acid film that so often starts tooth decay. Yet Forhan's costs no more than ordinary toothpastes.

So guard against Gingivitis—help your gums to be firmer—your teeth naturally bright and sparkling with Forhan's Toothpaste and massage.

You will hear my four children massaging their gums and brushing their teeth with Forhan's Toothpaste—massaging and brushing so vigorously and earnestly that it seems like a chorus shouting “down with gingivitis.”

Forhan's with massage not only helps gums to be firmer, but actually cleans dull teeth to their own *natural white brilliance*.

One best precaution against Gingivitis. Just put some Forhan's Toothpaste on your finger tip and massage it onto your gums.

Gingivitis helped in 30 days.

Forhan's—helps remove acids that cause decay.

No wonder so many dentists for over twenty years have used and recommended Forhan's.

PAR. 4. Through the use of the aforesaid statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that Forhan's Toothpaste when rubbed on the gums will make the gums firmer; will protect the user against gingivitis and pyorrhea, and is of value in the treatment of gingivitis; that the use of Forhan's Toothpaste as a dentrifice will cause the user's teeth to become natu-

Complaint

48 F. T. C.

rally white, sparkling, bright and lustrous, and will protect teeth against decay by removing from them the acids and acid films which are its cause; that large numbers of dentists have for many years recommended it for these purposes, and that by comparison with Forhan's all other toothpastes are "ordinary" and inferior.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, Forhan's Toothpaste, however applied, will not afford any protection to the user against either gingivitis or pyorrhea and is of no value in the treatment of gingivitis or any other ailment or condition of the mouth or gums. The firmness of gums is primarily dependent upon the general condition of the system and supporting mechanism of the teeth, and will not be enhanced, improved or affected by the use of said product either as a dentrifice, as a rubbing medium or both; the user will not be protected against gingivitis or other gum troubles nor rendered less susceptible thereto. Any benefit that may result from rubbing said product on the gums is due solely to the rubbing and not to any property of the toothpaste. Whether teeth naturally possess "whiteness," "sparkle," "brightness" and "lustre" depends upon the natural qualities of the tooth enamel. The teeth of some people possess these qualities; those of others do not and in such cases none of these qualities will be attained, acquired or disclosed through the use of Forhan's Toothpaste whether it is rubbed on the gums, used as a dentrifice or both. Forhan's will not, however used, protect the teeth of the user against decay. There is no substantial body of medical or dental opinion which holds that Forhan's dentrifice, when used as directed, will protect the teeth against acids or acid films in the localities where decay is most prevalent. The only value of Forhan's Toothpaste is as a not unpleasant adjunct to the use of the toothbrush in cleaning the teeth. No substantial number of dentists has recommended Forhan's as a means of accomplishing the results claimed by respondent and as set forth herein. Respondent's toothpaste possesses no inherent superiority in any respect over other toothpastes which warrants the characterization of such toothpastes by respondent as ordinary or common by comparison with respondents' product. Forhan's is in no respect extraordinary.

PAR. 6. The use by respondent of the foregoing false, misleading and deceptive statements and representations with respect to its said Forhan's Toothpaste has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of

substantial quantities of respondent's toothpaste because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 18, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Zonite Products Corporation and Erwin, Wasey & Company, Inc., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answers thereto, testimony and other evidence, the recommended decision of the hearing examiner and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the hearing examiner and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Zonite Products Corporation and Erwin, Wasey & Company, Inc., are corporations organized under the laws of the State of Delaware, and have their respective offices and principal places of business at 370 Lexington Avenue and 420 Lexington Avenue, New York, New York.

PAR. 2. Respondent Zonite Products Corporation is now, and has been for several years last past, engaged in the sale of Forhan's Toothpaste, a cosmetic preparation. Respondent Erwin, Wasey & Company, Inc., has been the advertising agent for respondent Zonite Products Corporation and has participated in the preparation and

Findings

48 F. T. C.

dissemination of the advertising matter, as hereinafter set forth subsequent to January 1, 1940.

PAR. 3. Respondent Zonite Products Corporation causes the said tooth paste, when sold, to be shipped and transported from its principal place of business in the State of New York and from its manufacturing plant in the State of New Jersey, to purchasers thereof located in various States other than that of the points of origin of such shipments; said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said tooth paste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of inducing the purchase of the cosmetic preparation, designated as Forhan's Toothpaste, respondents have disseminated and have caused the dissemination of many advertisements concerning said preparation by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of many advertisements concerning said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and periodicals and radio announcements, have been the following:

Sore Bleeding Gums of

GINGIVITIS

Helped in 30 Days!

Even *you* may be victim of gum
inflammation attacking thousands!

If gums are tender, sore or bleed, BEWARE! You may have Gingivitis, an inflammation where gums join teeth and, IF NEGLECTED, often forewarns of Pyorrhea which *only* your dentist can help.

BUT—you can help guard against Gingivitis this easy way: a recent clinical investigation shows over 95% of Gingivitis patients were *remarkably* helped in 30 days by cleaning teeth and massaging gums twice daily with Forhan's Toothpaste—the ORIGINAL toothpaste for massaging gums.

Massage and brushing with Forhan's helps keep gums firmer, healthier; * * *.

* * * *

1226

Findings

* * * Examine your gums closely. Are they tender, sore to touch? Do they bleed when you brush your teeth? Then anyone of these signs may mean Gingivitis has started its silent work on *you*. This mild gum inflammation is so common today four out of five may have it. If care isn't taken—it may lead to Pyorrhea which only your dentist can help. See your dentist—then at home help guard against Gingivitis with Forhan's toothpaste and massage. * * * Forhan's costs no more than ordinary toothpaste—so why not enjoy its advantages.

* * * *

Friends—a simple gum inflammation called Gingivitis is attacking thousands throughout the country. It's so common today four out of five of us may have it. *You* yourself may be getting it and at first not even suspect it. Some signs are *tender, bleeding gums*. If neglected this condition may lead to dreaded Pyorrhea, which only your dentist can help. See your dentist. Then at home help guard against Gingivitis by massaging your gums with Forhan's Toothpaste. This effective Forhan's method, developed by Dr. R. J. Forhan, helps gums to be firmer—thus more able to ward off infection. * * * Forhan's is one toothpaste you can buy today that helps remove acid film that so often starts tooth decay—yet Forhan's costs no more than ordinary toothpastes. Remember—sound, sparkling teeth require firm gums. So help by starting Forhan's and massage at once.

* * * *

The whole nation is awake to the importance of good teeth—and a good rule to remember is—good teeth need firm gums—and gums often need care in helping them to be firmer. The best care of course is to see your dentist four times a year. And in addition a good rule is to massage your gums twice a day with Forhan's Toothpaste. Some Forhan's toothpaste on your finger tip massaged gently onto your gums morning and night to help them be firmer—to help guard against Gingivitis—the tender bleeding gum condition to which four out of five of us may be subject * * *.

* * * *

* * * He was a very successful dentist—and I asked him about Forhan's Toothpaste. Excellent—he said—I have used Forhan's—he said—and recommended it for years. And I have seen what fine results it produces too. And he told me of a great many cases where he had checked Gingivitis—the sore, tender gum condition which most of us face—and in all those cases Forhan's as a gum massage and toothpaste has worked out fine. * * *

PAR. 6. Through the use of the statements hereinabove set forth, respondents have represented, directly and by implication, that uninstructed massage of the gums with Forhan's Toothpaste will help make gums firmer; that uninstructed massage of the gums and cleaning the teeth with Forhan's Toothpaste will protect the user against gingivitis and pyorrhea; that uninstructed massage of the gums and cleaning the teeth with Forhan's Toothpaste is of value in the treatment of gingivitis; and that, by comparison with Forhan's, all other tooth pastes are “ordinary” and inferior.

Findings

48 F. T. C.

PAR. 7. The formula for Forhan's Toothpaste is as follows:

<i>"Ingredients</i>	<i>Percentage</i>
Precipitated chalk-----	45.0
Sodium soap-----	1.6
Zinc soap (zinc stearate and zinc oleate)-----	.9
Glycerine (or other humectants)-----	35.0
Flavoring oils (peppermint, menthol and thymol)-----	.7
Mineral oil-----	.9
Gums-----	.47
Saccharine-----	.07
Certified color-----	.004
Sodium Chloride-----	.16
Water (by difference)-----	15.196
	100.00

The manufacturing process tolerates variances in the percentages of chalk, humectants, and water, of plus or minus .5% which has no material effect on the product, but may give slightly different quantitative values for those ingredients from batch to batch."

PAR. 8. Respondents' preparation contains nothing the application of which is of therapeutic value in the prevention or cure of any disease or disorder of the teeth or gums. Its sole value is as a cleaning agent. The use of this preparation on a toothbrush in brushing the teeth is of no value in the treatment of inflammation of the gums (gingivitis); its use on a toothbrush in brushing the teeth is of no value in preventing gingivitis or pyorrhea except to the extent that it may help to prevent gingivitis caused by accumulation of food particles or other foreign materials in places on the teeth which are accessible to a toothbrush.

The term "massage," as used in their above set-out advertisement means to the great majority of the general public a haphazard, indiscriminate rubbing of the gums with a toothbrush or finger. Massaging of the gums in this sense, whether with or without the said preparation, is of no value in making soft gums firm, or in the prevention or treatment of gingivitis or pyorrhea. The term "massage," as used by dentists, means a careful stroking or squeezing pressure applied to the gums in a particular area to achieve a specific purpose. Its proper use requires professional instruction. The testimony of the expert witnesses is conflicting as to the value of massaging the gums even with professional instruction. However, the preponderant weight of the qualified dental opinion is that massaging the gums in the sense of indiscriminately rubbing them is of no value and, in some cases, is actually harmful to the gums.

The results achieved through the use of respondents' preparation are essentially the same as those achieved through the use of other commercial tooth pastes. It is not extraordinary in the sense that the properties of competing commercial tooth pastes are inferior.

PAR. 9. The complaint also alleges that respondents have falsely represented that the use of Forhan's Toothpaste will protect teeth against decay by removing from them the acids and acid films which are its cause. Respondents represented "Forhan's * * * helps remove acid film that so often starts tooth decay * * *." The record shows that brushing teeth with a dentifrice will remove acid film from those surfaces of the teeth accessible to the toothbrush and that such acid film is one of the causes of tooth decay. Upon this record, the Commission is of the opinion that these allegations of the complaint have not been sustained.

PAR. 10. The complaint further alleges that respondents have falsely represented that the use of Forhan's Toothpaste as a dentifrice will cause the user's teeth to become naturally white, sparkling, bright and lustrous even though their natural appearance, even when clean and polished, is dull or yellowish. A typical representation is "cleans dull teeth to their own natural white brilliance." Interpreted literally, this represents that Forhan's Toothpaste will clean teeth to their own natural state which is that of white brilliance. All teeth are not naturally white nor brilliant. The use of Forhan's Toothpaste will not alter the original color or lustre of teeth though it will, through the removal of film, debris, dirt and surface stains, assist in cleaning them. However, in the absence of evidence to the contrary, it is believed that exaggerations as to the whiteness and lustre to be achieved by the use of a tooth paste are unlikely to deceive anyone factually as long as it is clearly stated that the tooth paste only cleans teeth to their own natural state. The Commission, therefore, finds that the allegation of the complaint that these representations are deceptive has not been sustained.

PAR. 11. The complaint further alleges that respondents have falsely represented that large numbers of dentists have for many years recommended Forhan's Toothpaste for the results claimed by respondents in their advertisements. The record does not contain evidence proving that large numbers of dentists have not so recommended Forhan's Toothpaste. Therefore, this allegation of the complaint has not been sustained.

PAR. 12. The statements and representations referred to in Paragraph Six of these findings have been and are false and misleading, and the advertisements wherein such statements and representations were made were false advertisements. Respondents' use of the afore-

Order

48 F. T. C.

said false and misleading statements and representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial number of the public to purchase said preparation because of such erroneous and mistaken belief.

PAR. 13. The Commission has considered the fact that the representations found to be false herein were contained in advertisements disseminated prior to the issuance of the complaint herein and that the record is silent as to whether or not respondents have continued to disseminate advertisements containing similar representations since that time. It has further considered the fact that respondents have at no time contended that they were not continuing to so advertise and have at all times vigorously contended that their said advertisements were proper and legal. Upon this record, the Commission is of the opinion that respondents are likely to so advertise in the future unless prohibited from doing so by an order of the Commission and that, therefore, the issuance of such an order is required in the public interest.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in Paragraphs Nine through Eleven inclusive) are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a hearing examiner of the Commission, theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Zonite Products Corporation and Erwin Wasey & Company, Inc., and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the cosmetic preparation, Forhan's Toothpaste, or

1226

Order

any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That massaging the gums with said preparation is of any value in making gums firmer or in the prevention of gingivitis or pyorrhea;

(b) That massaging the gums or brushing the teeth with said preparation is of any value in the treatment of gingivitis;

(c) That brushing the teeth with said preparation is of any value in the prevention of gingivitis or pyorrhea other than to the extent that locally caused gingivitis may be prevented by keeping the teeth clean;

(d) That the results obtained by the use of competing tooth pastes are inferior.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents 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 this order.

IN THE MATTER OF
HOME MACHINE SUPPLY, INC. 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 5884. Complaint, June 27, 1951—Decision, Apr. 24, 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 with markings covered or otherwise concealed, such public understands and believes them 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 two officers engaged in the competitive interstate sale of sewing machine heads purchased by them from importers, and of completed sewing machines made by attaching a motor to said heads in process of which the words "Made in Occupied Japan" or "Japan" were covered—

- (a) Failed adequately to disclose on said heads that they 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 whereby they might deceive the purchasing public as to the place of origin of said heads; and
- (b) Made such statements in their advertising as "Fully guaranteed", without disclosing the terms and conditions of the guarantee, effect of which was to confuse and mislead the public and purchasers;

With tendency and capacity to mislead members of the purchasing public into the erroneous belief that their said product was of domestic origin and thereby induce purchase of sewing machines of which said heads were a part; and with effect of unfairly diverting trade to them from competitor sellers of the domestic and of the imported products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of 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 for the Commission.

Mr. H. Robert Levine, of New York City, for respondents.