

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.

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 Home Machine Supply, Inc., a corporation, and Max Lippman, and Max Albin, 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, Home Machine Supply, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business at 750 Avenue of the Americas, New York, New York. Respondent Max Lippman is President and respondent Max Albin is Secretary-Treasurer of the corporate respondent, and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these 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 purchased by them from importers, and completed sewing machines of which said heads are a part, to retailers who sell to the purchasing public. In the course and conduct of their business respondents cause their said sewing machine heads, when sold, to be transported from their place of business in the State of New York to 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 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.

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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:

“Fully guaranteed”

The use of the word “guaranteed” in said advertising without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice in commerce.

PAR. 6. 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. 7. 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 sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 8. 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 their 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. 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.

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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 24, 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 proceedings upon the respondents Home Machine Supply, Inc., a corporation, and Max Lippman and Max Albin, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On July 25, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in New York, New York, on December 6, 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 facts set forth in the complaint, which motion was granted on the record and confirmed by formal order filed herein on December 7, 1951. Such substituted answer reserved to respondents the right and privilege 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 was received, which the Hearing Examiner has retained of record, no motion to strike same having been made by either party, which testimony is 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 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, Home Machine Supply, Inc., is a corporation organized and existing under and by virtue of the laws of the

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State of New York with its office and principal place of business at 750 Avenue of the Americas, New York, New York. Respondent Max Lippman is President and respondent Max Albin is Secretary-Treasurer of the corporate respondent, and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these 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 purchased by them from importers, and completed sewing machines of which said heads are a part, to retailers who sell to the purchasing public. In the course and conduct of their business respondents cause their said sewing machine heads, when sold, to be transported from their place of business in the State of New York to 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 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.

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:

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"Fully guaranteed"

The use of the word "guaranteed" in said advertising without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice in commerce.

PAR. 6. 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. 7. 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 sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 8. 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 their 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' 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, Home Machine Supply, Inc., a corporation, and its officers, and Max Lippman and Max Albin, 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 or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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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. Representing, directly or by implication, that their sewing machine heads or sewing machines are fully guaranteed, or that they are otherwise guaranteed, unless the nature and extent of the guarantee, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 24, 1952].

Syllabus

IN THE MATTER OF
ROMAN-RAICHERT COMPANY, 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 5886. 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.

The names "Cadillac" and "Zenith" are the names or part of the names of corporations doing business in the United States which are well and favorably known to the purchasing public and long established in various industries, some of which also use said words as trade names, marks or brands for their products—particularly "Cadillac automobiles" and "Zenith radios"—and there is a preference among members of the purchasing public for products made by the concerns whose identity is connected with said words.

Where a corporation and its three officers, engaged in the competitive interstate sale to retailers of sewing machine heads imported from Japan and of completed sewing machines which incorporated said heads through attachment of a motor thereto, 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";
- (b) Falsely represented that their sewing machine heads were made by certain well-known firms through printing on the front of the horizontal arms in conspicuous letters the words "Cadillac" or "Zenith", and through use in their advertising of such trade names; and enhanced thereby the belief on the part of the public that said heads were of domestic origin; and
- (c) Made such statements in their advertising as "20 year guarantee", without disclosing the terms and conditions of the guarantee, effect of which was to confuse and mislead the public and purchasers;

With result of providing dealers, in whose hands they placed said completed sewing machines, a means to deceive the purchasing public as to the place of origin of said heads and the manufacturers thereof; and with tendency and capacity to lead substantial numbers of the purchasing public into the