

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

Complaint

48 F. T. C.

erroneous belief that their said products were of domestic origin and made by well-known domestic manufacturers; and to induce thereby purchase of such sewing machines, and thus unfairly divert trade and commerce to them from their competitors, to the substantial injury of competition in commerce:

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

Korshak & Rothman, of Chicago, Ill., 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 Roman-Raichert Company, Inc., and Roman Raichert, Leonard Raichert and Edward Raichert, 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 Roman-Raichert Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3855 North Lincoln Avenue, Chicago, Illinois. Respondents Roman Raichert, Leonard Raichert and Edward Raichert are President and Vice President, Secretary and Treasurer, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The 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 from Japan, and completed sewing machines of which said heads are a part, to retailers who in turn sell them 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 Illinois 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 substantial.

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

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

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

PAR. 6. Respondents have adopted and use the words "Cadillac" and "Zenith" for their said sewing machine heads, which words are printed on the front horizontal arm of the head in conspicuous letters and use such trade names in their advertising. The names "Cadillac" and "Zenith" are the names or part of the names of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Cadillac" or "Zenith" as trade names, marks or brands for their products, particularly Cadillac automobiles and Zenith radios.

PAR. 7. By using said trade names respondents represent that their product is manufactured by the well known firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Cadillac" and "Zenith" and the use of said trade names by respondents on their sewing machine heads enhances the belief on the part of the public that the machine heads are of domestic origin.

PAR. 9. Respondents in their advertising make such statements as the following:

“20 year guarantee”

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

PAR. 10. 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 and the manufacturer thereof.

PAR. 11. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 12. The failure of respondents to adequately disclose on their sewing machine heads that they are manufactured in Occupied Japan and the use of the words “Cadillac” and “Zenith” as a trade or brand name has the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce substantial numbers of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result thereof, 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. 13. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 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 proceeding upon respondents Roman-Raichert Company, Inc., a corporation, and Roman Raichert, Leonard Raichert and Edward Raichert, individually and as officers of Roman-Raichert Company, Inc., they being respectively President and Vice-President, Secretary, and Treasurer thereof, charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said Act. On July 20, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Chicago, Illinois, November 14, 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 November 16, 1951. Such substituted answer reserved to respondents the 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. 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 submitted on behalf of the respondents, none such having been filed by the attorney in support of the complaint; 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 Roman-Raichert Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3855 North Lincoln Avenue, Chicago, Illinois. Respondents Roman Raichert, Leonard Raichert and Edward Raichert are President and Vice-President, Secretary and Treasurer, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

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 from Japan, and completed sewing machines of which said heads are a part, to retailers who in turn sell them 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 Illinois 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 substantial.

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

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

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

PAR. 6. Respondents have adopted and use the words "Cadillac" and "Zenith" for their said sewing machine heads, which words are printed on the front horizontal arm of the head in conspicuous letters and use such trade names in their advertising. The names "Cadillac" and "Zenith" are the names or part of the names of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the words "Cadillac" or "Zenith" as trade names, marks or brands for their products, particularly Cadillac automobiles and Zenith radios.

1245

Conclusion

PAR. 7. By using said trade means respondents represent that their product is manufactured by the well known firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Cadillac" and "Zenith" and the use of said trade names by respondents on their sewing machine heads enhances the belief on the part of the public that the machine heads are of domestic origin.

PAR. 9. Respondents in their advertising make such statements as the following:

"20 year guarantee"

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

PAR. 10. 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 and the manufacturer thereof.

PAR. 11. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 12. The failure of respondents to adequately disclose on their sewing machine heads that they are manufactured in Occupied Japan and the use of the words "Cadillac" and "Zenith" as a trade or brand name has the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by the well and favorably known domestic manufacturers with which said names have long been associated, and to induce substantial numbers of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result thereof, 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, are all to the prejudice and injury of the public and of respondents'

Order

48 F. T. C.

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, Roman-Raichert Company, Inc., a corporation, and its officers, and Roman Raichert, Leonard Raichert and Edward Raichert, 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:

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

2. Using the words "Cadillac," or "Zenith," or any simulations thereof, as brand or trade names to designate, describe or refer to their sewing machines or sewing machine heads; or representing through the use of any other words or in any other manner that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturers.

3. Representing, directly or by implication, that their sewing machine heads or sewing machines are guaranteed for twenty years, or for any other period of time, 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
NATIONAL INSTITUTE OF PRACTICAL NURSING 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 5700. Complaint, Oct. 3, 1949—Decision, Apr. 30, 1952

The designation of "practical nurse", when applied to one who acquired it by attending a school, means, in its full sense, one who has satisfactorily completed a full-time, nine months' course of instruction which includes a substantial amount of time in a hospital or other institution for the care of the sick, with work under supervision at the bedside of patients therein.

Where a corporation and its two officers, engaged in the operation of a school, purportedly for the training of practical nurses, which included the furnishing of 38 printed lessons, classroom instruction consisting of two two-hour periods weekly extending over six months (a total of some 96 hours), a bath thermometer, clinical thermometer, nurse's uniform and cap, forceps and certain other equipment, class instruction given on the premises by registered nurses and one physician who lectured to each class about twelve times; and the giving of examinations to the students from time to time; but did not include any hospital training, demonstrations in which sick people were involved, or contact by the students with actual living patients, the "practical" training being given on manikins;

In representations which were in large part addressed to residents of Washington, D. C., and its immediate vicinity, who contemplated employment in the same area after taking the course, and which were contained in newspapers published in said District, and in postcards and letters sent to prospective students—

- (a) Represented, directly and by implication, that there was no distinction or difference between "practical nurses", "trained practical nurses" and "graduate practical nurses", and that its graduates forthwith entered all of said categories, and were practical nurses in the full sense of the term;
- (b) Represented that the course of instruction was complete and covered all the necessary subjects in such a manner that one who successfully completed it had become a practical nurse in the full sense of the term;
- (c) Represented that many hospitals desire the services of and employed practical nurses; and
- (d) Represented orally to some prospective students that they would be eligible for employment as practical nurses in Washington, D. C., hospitals; would be recognized as practical nurses; that the school was recognized by hospitals and the Red Cross; and that they would be qualified to practice in any hospital with a graduate practical nurse's qualifications;
- (e) Falsely represented that a certain Washington hospital recognized "the diploma or certificate issued" to their graduates;