

Syllabus

IN THE MATTER OF
BENJAMIN BIELER ET AL. DOING BUSINESS AS BIELER
AND RABINOWITZ AND SEW-EASY PRODUCTS CO.

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

Docket 5891. Complaint, June 27, 1951—Decision, Aug. 28, 1952

When sewing machines are exhibited and offered for sale by retailers to the purchasing public not marked or not adequately marked showing their foreign origin, or if foreign markings are concealed, such purchasing public understands and believes them to be wholly of domestic origin.

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

Where two partners engaged in the interstate sale to wholesale and retail dealers of imported sewing machine heads which, when purchased by them from the importers or from other dealers disclosed their Japanese origin in some cases plainly on the front of the vertical arms, in others in such a way as to be distinguished only by careful inspection, and in others on the rear of said arm, to some of which heads they attached a motor which concealed the words "Made in Occupied Japan" or "Japan"—

- (a) Failed adequately to disclose on said sewing machine heads, to which motors of domestic manufacture, as plainly indicated thereon had been attached as aforesaid, that said heads were manufactured in Occupied Japan;
- (b) Falsely represented that they were the manufacturers of the sewing machine heads or sewing machines they sold through the statement in their advertising, "All machines are fully guaranteed at our factory," notwithstanding the fact that they had no factory, and thereby still further strengthened and implemented the erroneous impression engendered as aforesaid; and
- (c) Confusingly and misleadingly represented that their said products were fully or otherwise guaranteed through use of the word "guaranteed" as above set forth, without disclosing the terms and conditions of the guarantee and clearly indicating the identity of the guarantor;

With tendency and capacity to lead a substantial number of the purchasing public into the erroneous belief that their said products were of domestic origin and manufactured by them and thereby induce purchase thereof, with the result of unfairly diverting substantial trade in 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 their competitors, and constituted unfair methods of competition in commerce and deceptive acts and practices therein.

In said proceeding the fact that the acts and practices of respondents, found violative of the Federal Trade Commission Act, constituted a minor rather than a major part of respondents' business, as contended, was neither defense nor justification for that part thereof continuing to deceive and mislead, even indirectly, the substantial numbers of the public involved.

Complaint

49 F. T. C.

Before *Mr. Frank Hier*, hearing examiner.
Mr. William L. Taggart for the Commission.

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 Benjamin Bieler and Louis Rabinowitz, copartners doing business as Bieler and Rabinowitz and Sew-Easy Products 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 would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Benjamin Bieler and Louis Rabinowitz are copartners doing business under the names of Bieler and Rabinowitz and Sew-Easy Products Company with their principal place of business at 565 Stone Avenue, Brooklyn, New York.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of imported sewing machine heads purchased by them from importers and completed sewing machines of which said heads are a part both of which are sold 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 New York to the purchasers thereof located in various other States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are 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 completed 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 sold 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 machines.

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 their advertising make such statements as the following:

All machines are fully guaranteed at our factory.

Persons who purchase the products from respondents are led to believe by such statement that the respondents manufacture their products, when in truth and in fact respondents do not own or control a factory in which their sewing machines or sewing machine heads are manufactured. Substantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them. 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 practice.

PAR. 8. 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 products.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in occupied Japan and the use of the word "factory" in their advertising have the tendency and capacity to lead a substantial number of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by respondents and to induce a substantial number of the purchasing public to purchase sewing machines containing the said heads because of this 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.

Findings

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PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated August 28, 1952, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, 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 this proceeding upon respondents Benjamin Bieler and Louis Rabinowitz, copartners doing business as Bieler and Rabinowitz and Sew-Easy Products Company, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondents offered no witnesses in their behalf nor any other evidence except two exhibits. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answer thereto, testimony and other evidence 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, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Benjamin Bieler and Louis Rabinowitz are copartners doing business under the names of Bieler and Rabinowitz and Sew-Easy Products Company with their principal place of business at 565 Stone Avenue, Brooklyn, New York.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of imported sewing machine heads purchased by them from importers and completed sewing machines of which said heads are a part both of which are sold 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 New York to the purchasers thereof located in various other States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents do not import sewing machines or machine heads, but they buy sewing machines which have been imported from Japan, from the importers or from other dealers. Respondents resell to dealers, both wholesale and retail, but not to the using public. Whatever markings are on the machines purchased by respondents, showing the country of origin, whether by plaque, printing or decalcomania, are left unchanged by them. Some of the foreign made machines purchased and resold by respondents have a plaque on the front of the vertical arm, reading in raised letters of $\frac{1}{4}$ to $\frac{3}{8}$ of an inch, "Japan" or "Made in Occupied Japan"; others have a decalcomania to the same effect on the rear of the vertical arm, some have both. Respondents purchase Japanese made and imported sewing machines, as above described, with and without attachments already on the sewing machine head (such as light, motor, foot pedal) and these purchases are sometimes resold in the same condition by respondents after inspection and stitching off; in other instances, respondents attach a motor and other accessories before resale, and in still other instances, sell therewith portable sewing machine cases, cabinets, etc., in addition to the machine itself.

PAR. 4. When a motor is attached to the imported sewing machine head, the decalcomania marking "Japan" or "Made in Japan" or "Made in Occupied Japan" on the rear of the vertical arm is completely concealed from even careful inspection, short of removing the motor or turning the machine into a position, imposed by the desire to see that particular spot but entirely unlikely to ensue from ordinary or normal use of the machine. There is abundant and substantial evidence in the record, both testimonial and stipulated, that purchaser-users never saw or suspected their sewing machine's foreign origin until this concealed decalcomania was exhibited to them. The finding is that such marking is for practical purposes, and to the ordinary user or purchaser, completely and effectively obliterated.

PAR. 5. Some of the medallions riveted to the front of the vertical arms of some of these imported machines sold by respondents plainly and visibly state "Japan" or "Made in Occupied Japan" without more, in such a way that even casual inspection would apprise the purchaser of country of manufacture, although casual view might not. Others of these medallions on respondents' sewing machines are in bright gold color, in raised letters only, with no background coloring to emphasize the raised letters, and with other lettering, such as a brand or trade name of similar size and protrusion, so that the words "Japan" or "Made in Japan" are indistinct, difficult to read, unemphasized, and distinguishable only by careful inspection. There is ample and substantial evidence, both testimonial and stipulated in the record, that users and purchasers did not see, or seeing, did not comprehend, such markings, and in one or more instances, although seen and comprehended, was misunderstood to mean simply a foreign sales office of a domestic manufacturer. The finding on this point is, that such markings are not adequate notice to the public that the machines to which they are riveted are imported.

PAR. 6. There is a conflict in the evidence as to whether using purchasers of respondents' machines were, in fact, made aware of their foreign origin by their immediate vendor. Only one such dealer, who bought from respondents, and resold to the public testified. His purchases were both assembled (with attachments) and stripped; some were marked as to country of origin, others were not. He knew they were imported machines and testified he uniformly and personally informed each purchaser of that fact. The latter statement is corroborated by one of his customers, who bought two of them, the only marking thereon being a decalcomania on the rear of the vertical arm completely concealed by the attached motor, as hereinbefore described. This "personal marking" testimony is however contradicted directly and testimonially by two of this dealer's customers, and impliedly by the stipulated testimony of five other housewives. In addition, respondents' invoices to the dealer and the latter's sales "cards" given the customer upon purchase bore the abbreviation "Imp" thereon in front of the brand name. However, this was taken to mean "improved" rather than "imported" by the only witness to testify about it. Two of such invoices however plainly state "imported." On this point, the weight of the evidence is against the "warning" or "advice" by the dealer to the purchaser-user, both quantitatively and qualitatively. The finding is that although the purchaser from respondents knew the sewing machines were imported from Japan, using customers of such purchaser were unaware of that fact and purchased in the belief that such machines were manufactured in the United States.

PAR. 7. When 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, on the evidence in the record herein, understands and believes such articles to be wholly of domestic origin.

PAR. 8. There is, according to the record herein, among the members of the purchasing public, a substantial number who have a decided preference for sewing machines originating in the United States over such products originating in whole or in part in foreign countries.

PAR. 9. The erroneous impression of domestic origin, created by inadequate or inconspicuous marking as to foreign origin, or adequate marking either concealed or obliterated, the public belief that an unmarked article is of domestic origin and the preference of a substantial part of the public for sewing machines of domestic origin is furthered and strengthened by the fact that the motor, attached to these sewing machine heads, sometimes by respondents, other times by their vendees, is, on this record, uniformly of domestic manufacture, plainly indicated by markings on its top, either with the name of a manufacturer associated in the public mind with domestic manufacture, or with such name plus the name of a city where such company is located.

PAR. 10. This erroneous impression is still further strengthened and implemented by the fact that respondents in their advertising make such statements as the following:

All machines are fully guaranteed at our factory

Persons who purchase sewing machines from respondents are led to believe by such statement that the respondents manufacture their products, when in truth and in fact respondents do not own or control a factory in which their sewing machines or sewing machine heads are manufactured. The use of the word "Guaranteed" in said advertising without disclosing the terms and conditions of the guarantee, and without clearly indicating the identity of the guarantor, is confusing and misleading to the public and purchasers and constitute an unfair and deceptive practice.

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 products.

PAR. 12. The failure of respondents adequately to disclose on the sewing machine heads that they are manufactured in Occupied Japan and the use of the word "factory" in their advertising have the tend-

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ency and capacity to lead a substantial number of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by respondents and to induce a substantial number of the purchasing public to purchase sewing machines containing the said heads because of this 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.

CONCLUSIONS

1. 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.

2. The fact that the acts and practices of respondents, hereinabove found to be violative of the Federal Trade Commission Act, constitute a minor rather than a major part of their business, as contended, is neither defense nor justification for that part continuing to deceive and mislead, even indirectly, the substantial numbers of the public shown by the record herein.

ORDER

It is ordered, That the respondents, Benjamin Bieler and Louis Rabinowitz, individually and as copartners doing business as Bieler and Rabinowitz and as Sew-Easy Products Company, or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are 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.

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

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of August 28, 1952].

Complaint

49 F. T. C.

IN THE MATTER OF

U. S. PRINTING & NOVELTY CO., INC. ET AL.

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

Docket 5647. Complaint, Apr. 1, 1949—Decision, Sept. 4, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed and used only for the sale of other merchandise by ultimate purchasers by lot or chance under a plan whereby purchasers who, by chance, selected specified numbers received articles of merchandise without additional cost at much less than their normal retail price and others received nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to dealers who made them up with assortments of candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles which were exposed and sold by direct or indirect retail purchasers to the public by means of said devices; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise, contrary to established public policy of the United States Government; and supplied to and placed in their hands means for engaging in unfair acts and practices; With the result that many members of the purchasing public, because of the element of chance involved, were induced to trade or deal with retail dealers who thus sold or distributed their merchandise; many retailers were thereby induced to deal with suppliers of said merchandise packed with said push cards and punchboards; and gambling among members of the public was taught and encouraged, all to the injury of the public:

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

Before *Mr. Clyde M. Hadley* and *Mr. Abner E. Lipscomb*, hearing examiners.

Mr. J. W. Brookfield, Jr. for the Commission.

Nash & Donnelly, of Washington, D. C., 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 U. S. Printing & Novelty Co., Inc., a corporation, and Benjamin Blush, Jack Blush, and Hyman Abramowitz, individuals, officers, and directors of said U. S. Printing & Novelty Co., Inc., hereinafter referred to as respond-