

IN THE MATTER OF

GETZ BROS. & CO. 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 6015. Complaint, July 22, 1952—Decision, Jan. 29, 1953

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked or inadequately marked to show their foreign origin, or if such markings are concealed, the purchasing 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 manufactured in the United States over those manufactured in whole or in part in foreign countries, including sewing machine heads.

There is a preference among members of the purchasing public for products manufactured by the well and favorably known and long established concerns whose identity is connected with the word "Admiral," and other prominent domestic brand or trade names.

Where a corporation and its six officers, engaged in the competitive interstate sale and distribution of sewing machine heads imported from Japan, which their distributor and retailer purchasers incorporated in complete sewing machines which were sold to the purchasing public—

- (a) Failed adequately to disclose such foreign origin on their said sewing machine heads, upon which the word "Japan," displayed on the back of the arm when imported, became concealed through the attachment of a motor thereto, and, where displayed on a medallion on the front of the arm (if not removed), was so small and indistinct as not to constitute adequate notice to the public, there being no other mark placed thereon to inform the public of said fact; and
- (b) Falsely represented through the use of the word "Admiral" and other prominent domestic names as trade or brand names for their sewing machine heads and prominent display thereof on the front horizontal arm of the product and use thereof in their advertising matter, that their product was manufactured by or connected in some way with the well and favorably known firm or firms with which said trade or brand names had long been associated;

With effect of enhancing the belief of the public that said sewing machines were wholly of domestic origin, and of providing dealer-purchasers with a means to mislead it as to their place of origin; and with tendency and capacity to lead members of the purchasing public into the erroneous belief that their said product was of domestic origin and made by said well known firm, and thereby induce purchase thereof; whereby substantial trade in

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commerce was unfairly diverted to them from their competitors to its substantial injury:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce, and unfair methods of competition therein.

As respects respondents' contention that no liability should attach to the individual respondents in their individual capacities on the ground, based on stipulated testimony, that the acts complained of took place under the direct supervision of certain subordinate managerial and sales officials who were in charge of the corporate respondent's sewing machine head importing business; that the individual respondents did not personally participate in the sale of the sewing machine heads; that it was only a small part of their overall business operations; and that they were not aware that any violation of law was involved until so informed by a representative of the Commission in November, 1951:

It being admitted that the managerial and sales personnel referred to were acting within the scope of their employment and that the individual respondents formulated, directed, and controlled the acts and practices of the corporate respondent; and that after said individual respondents concededly became aware that certain of the firm's practices were being questioned by the Commission, no steps were taken by the corporate respondent or the individual respondents to rectify the situation;

Said testimony, assuming its materiality, did not under the circumstances exculpate the individuals from responsibility for the violations of the Federal Trade Commission Act which had occurred, and, under all the circumstances, it was appropriate that responsibility should attach not only to the corporate respondent, as was conceded, but to the individual respondents also in their individual capacities; and that an order to cease and desist should run against all of the respondents in order to effectuate the purposes of the Act.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart for the Commission.

Slack & Zook, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Getz Bros. & Co., a corporation, and Rene May, Arthur P. Lazarus, Lester L. Goodman, Charles J. Kelly, Nathan Most and L. Lenehan, 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:

PAR. 1. Respondent Getz Bros. & Co. is a corporation, organized and existing under and by virtue of the laws of the State of California, with offices and principal places of business located at 231 Sansome Street, San Francisco, California, and 39 Broadway, New York, New York. Respondents Rene May, Arthur P. Lazarus, Lester L. Goodman, Charles J. Kelly, Nathan Most and L. Lenehan are president, vice-president, vice-president, vice-president, treasurer and secretary, respectively, of corporate respondent, and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The 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 complete sewing machines of which said heads are a part, to distributors and also to retailers who in turn sell the complete sewing machines to the purchasing public. In the course and conduct of their business respondents cause their said product when sold to be transported from their places of business in the States of California and New York to the purchasers thereof located in various other States of the United 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 "Japan" appears 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 word is covered by the motor so that it is 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 word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Furthermore, said medallion can be readily removed and when the medallion is so removed, no visible mark of origin appears on the machine.

Respondents place no other mark on their imported sewing machine heads or complete sewing machines of which said heads are a part, showing foreign origin, or otherwise inform the public that the heads are of foreign origin before they are offered for sale to the purchasing public.

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 show-

ing 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 manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents use the word "Admiral" and other prominent domestic names as trade or brand names for their sewing machine heads and complete sewing machines, which words are printed or embossed on the front horizontal arm of the head in large conspicuous letters and use said trade or brand names in their advertising matter. The word "Admiral" and the other prominent domestic names are the names or parts of the names of, or used as trade names, marks or brands by one or more business organizations 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 well and long established in various industries.

PAR. 6. By using a trade name such as "Admiral," and other prominent domestic brand or trade names, respondents represent, directly or by implication, that their product is manufactured by or connected in some way with the well and favorably known American firm or firms with which said name has long been associated, which is contrary to the fact.

PAR. 7. There is a preference among members of the purchasing public for products manufactured by the well and favorably known and long established concern whose identity is connected with the word "Admiral," and other prominent domestic brand or trade names. The use of said trade or brand names by respondents on their sewing machines enhances the belief on the part of the public that the said sewing machines are wholly of domestic origin.

PAR. 8. Respondents, by placing in the hands of dealers their said sewing machine heads and complete sewing machines, provide said dealers with a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 9. Respondents, in the course and conduct of this business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines, and also with sellers of imported sewing machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 10. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot be readily removed,

hidden or obliterated, that they are manufactured in Japan and also the use of a trade or brand name such as "Admiral," and the use of other prominent domestic names, have 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 is manufactured by the well and favorably known firm or firms with which said trade or brand names have long been associated, and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, 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. 11. 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 and deceptive acts and practices and unfair methods of competition 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 January 29, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 22, 1952, issued and subsequently served its complaint in this proceeding upon respondents, Getz Bros. & Co., a corporation, and Rene May, Arthur P. Lazarus, Lester L. Goodman, Charles J. Kelly, Nathan Most and L. Lenehan, individually and as officers of said corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held before the above-named hearing examiner, theretofore duly designated by the Commission, at which hearing counsel for the respondents and counsel in support of the complaint agreed that in lieu of the introduction of oral testimony and other evidence in support of and in opposition to the allegations of the complaint, the proceeding would be submitted for decision on the basis of certain admissions by respondents' counsel with respect to

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various allegations of the complaint and certain stipulated testimony, which admissions and stipulated testimony were spread upon the record at said hearing. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, and the stipulated testimony and admissions, counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner and having not requested oral argument; 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 Getz Bros. & Co. is a corporation, organized and existing under and by virtue of the laws of the State of California, with offices and principal places of business located at 231 Sansome Street, San Francisco, California, and 39 Broadway, New York, New York. Respondents Rene May, Arthur P. Lazarus, Lester L. Goodman, Charles J. Kelly, Nathan Most and L. Lenahan are president, vice-president, vice-president, vice-president, treasurer and secretary, respectively, of corporate respondent, and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The 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, to distributors and retailers who in turn sell complete sewing machines, of which said imported heads are a part, to the purchasing public. In the course and conduct of their business respondents cause their said product when sold to be transported from their places of business in the States of California and New York to the purchasers thereof located in various other States of the United 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 word "Japan" appears 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 word is covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the

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vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Furthermore, said medallion can be readily removed and when the medallion is so removed, no visible mark of origin appears on the machine.

Respondents place no other mark on their imported sewing machine heads or on the complete sewing machines of which said heads are a part, showing foreign origin, or otherwise inform the public that the heads are of foreign origin before they are offered for sale to the purchasing public.

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 they are of foreign origin, or if marked and the markings are covered or otherwise concealed, the 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 manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents use the word "Admiral" and other prominent domestic names as trade or brand names for their sewing machine heads, which heads are later assembled as part of complete sewing machines. Said trade or brand names are printed or embossed on the front horizontal arm of the head in large, conspicuous letters and are also used by respondents in their advertising matter. The word "Admiral" and the other prominent domestic names used are the names or parts of the names of, or used as trade names, marks or brands by, one or more business organizations 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 well and long established in various industries.

PAR. 6. By using a trade name such as "Admiral," and other prominent domestic brand or trade names, respondents represent, directly or by implication, that their product is manufactured by or connected in some way with the well and favorably known American firm or firms with which said name has long been associated, which is contrary to the fact.

PAR. 7. There is a preference among members of the purchasing public for products manufactured by the well and favorably known and long established concern whose identity is connected with the word "Admiral," and other prominent domestic brand or trade names. The use of said trade or brand names by respondents on their sewing

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machines enhances the belief on the part of the public that the said sewing machines are wholly of domestic origin.

PAR. 8. Respondents, by placing in the hands of dealers their said sewing machine heads, which it may reasonably be anticipated will be incorporated as part of complete sewing machines, provide said dealers with a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 9. Respondents, in the course and conduct of this business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines, and also with sellers of imported sewing machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 10. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot be readily removed, hidden or obliterated, that they are manufactured in Japan, and also the use of a trade or brand name such as "Admiral," and the use of other prominent domestic names, have 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 is manufactured by the well and favorably known firm or firms with which said trade or brand names have long been associated, and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, 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

Respondents admit that the corporate respondent has engaged in the acts and practices hereinabove found and agree that by reason thereof, a finding of violation of the Federal Trade Commission Act may be made against that respondent and that an order to cease and desist may be issued against it. They contend, however, that no liability should attach to the other respondents in their individual capacities and that no cease and desist order should be issued against them in such capacities. This contention is based on the stipulated testimony of the respondent Rene May that the acts complained of took place under the direct supervision of certain subordinate managerial and sales officials who were in charge of the corporate respondent's sewing machine head importing business, that the individual respondents did not personally participate in the sale of the sewing machine

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heads, said portion of their business being only a small part of their overall business operations, and that they were not aware than any violation of law was involved until so informed by a representative of the Commission in November 1951.

Assuming, arguendo, the materiality of this testimony and assuming that it may be accepted as the basis for affirmative findings of fact, it does not, under the circumstances here present, exculpate the individual respondents from responsibility for the violations of the Act which have occurred. It is admitted that the managerial and sales personnel under whose direct supervision the acts and practices complained of occurred were acting within the scope of their employment and, further that the individual respondents formulate, direct and control the acts and practices of the corporate respondent. Moreover, with respect to the charge of improperly marking the foreign origin of the sewing machine heads, it is admitted that after November 1951 when the individual respondents concededly became aware that certain of the firm's practices were being questioned by the Commission, no steps were taken by the corporate respondent or the individual respondents to rectify this situation. Under all the circumstances, it is appropriate that responsibility should attach to the other respondents, in their individual capacities, as well as to the corporate respondent, and it is deemed necessary that an order to cease and desist should run against all of the respondents in order to effectuate the purposes of the Act. (*Steelco Stainless Steel, Inc., vs. Federal Trade Commission*, 187 F. (2d) 693; *Consumer Sales Corporation vs. Federal Trade Commission*, 198 F. (2d) 404; *Standard Education Society*, 302 U. S. 112; *Sebrone vs. Federal Trade Commission*, 135 F. (2d) 676.)

Accordingly, it is concluded that the acts and practices of respondents, as above found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Getz Bros. & Co., a corporation, and its officers, and Rene May, Arthur P. Lazarus, Lester L. Goodman, Charles J. Kelly, Nathan Most and L. Lenehan, 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 the country of origin thereof, in such a manner that it cannot readily be hidden or obliterated.

2. Using the word "Admiral" or any simulation thereof, 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 sewing machines or sewing machine heads are made by anyone other than the actual manufacturer.

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 January 29, 1953].

IN THE MATTER OF

LATHEM TIME RECORDER COMPANY 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 5713. Complaint, Dec. 1, 1949—Decision, Feb. 6, 1953

Where a corporation and its three officers, who were engaged in manufacturing, servicing and repairing, and in the competitive interstate sale and distribution of, clocks and other time-recording instruments, including particularly watchman's clocks, and who, by virtue of the former business activities of the corporate president, were in possession of a list of 18,000 names or more in which was included information of every watchman's clock which had passed through their shop since 1919; and during a period in which said president's former partnership was agent for other manufacturers, competitively engaged;

In carrying on their corporate business since 1946, in the course of which they made such statements in circular letters as "We have not cleaned, oiled or adjusted your night watchman's clock within two years" * * * "may we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs" * * * "we will appreciate hearing from you on the attached card. Please reply"—

- (a) Represented falsely, directly and by implication, that they had previously cleaned, oiled and adjusted the watchman's clocks of all those to whom the aforesaid form letters were addressed;
- (b) Represented falsely that they had kept a record of the dates on which such clocks were cleaned, oiled or adjusted; when they could not legitimately have done so;
- (c) Represented falsely, through concealing or obscuring in many instances, the name of the manufacturer of the clock, possession of which they thus secured, and by placing their own name thereon, that they were the manufacturers of the clocks, and that they were successors or representatives of competitive watchman's clock manufacturers; and
- (d) Represented through the statement "We will allow you a 20 percent discount on service work now" that the addressees of the said letters would receive a special discount if they sent their watchman's clocks to respondents for cleaning, oiling or repairing; the facts being the prices they charged were the usual and customary ones for such services;

With tendency and capacity to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents competitors, and of causing such owners and users to send such clocks to respondents for servicing; and with effect of placing them in a position, through thus deceptively obtaining possession of a clock made by a competitor, to point out to the owners the defects of the particular product and the claimed