

Syllabus

IN THE MATTER OF

IRVING EPSTEIN ET AL. DOING BUSINESS AS MODERN
SEWING MACHINE COMPANY

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

Docket 5817. Complaint, Oct. 16, 1950—Decision, Feb. 16, 1953

Persons who buy machines represented as being factory rebuilt believe that such new parts as have been used to replace worn parts are genuine factory products, and there is a preference on the part of retailers and the public in buying rebuilt machines that any new parts added be genuine factory parts.

Where three partners engaged in the purchase of used sewing machines and in the rebuilding and reconditioning thereof, involving the replacing of worn parts with new; in advertising such machines to dealers in various states—

Falsely represented, directly or by implication, through such statements as "Guaranteed factory rebuilt sewing machines" followed by such words as "Singer 66 Round-Bobbin Reconditioned Head" or "White Rotary Round Bobbin Reconditioned Head" that the Singer and White machines referred to were rebuilt by or at the factory of the original manufacturers and that genuine factory parts were used in the process of rebuilding;

With tendency and capacity to mislead and deceive retailers and with result of placing in their hands a basis for misleading and deceiving the purchasing public into the erroneous belief that said representations were true, thereby inducing the purchase of said rebuilt sewing machines:

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 in commerce.

As respects the allegation of the complaint that respondents' use of the word "guaranteed" in connection with their rebuilt machines without disclosing the terms and conditions of the guarantee was confusing and misleading; it appeared that it was respondents' practice, when complaint was made, either to furnish another machine or refund the purchase price—a manner of making good their advertised guarantee which rendered it highly unlikely that any purchaser would be confused or misled to his damage.

With regard to the adequacy of the disclosure of foreign origin of the machines imported by respondents from Japan, upon the machines themselves; no such issue was presented and such a question was consequently not before the Commission for determination, and as respects Spanish machines imported and sold by respondents, the record did not show that the marks on the machine when sold were inadequate, even if the complaint be taken as raising such an issue.

As respects respondents' alleged failure to disclose the foreign origin of their imported machines in their advertising, with capacity and tendency to induce

Complaint

49 F. T. C.

the belief that "such statements and representations were and are true": no allegations that respondents made any statements or representations in their advertising concerning the origin of their imported machines appeared in the complaint and consequently no issue was presented with respect to non-disclosure of foreign origin in their advertising.

Before *Mr. Clyde M. Hadley*, 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 Irving Epstein, Rita Epstein and Sam Epstein, copartners doing business as Modern Sewing Machine 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, Irving Epstein, Rita Epstein and Sam Epstein, operate as a partnership under the name of Modern Sewing Machine Company with their principal office and place of business located at 109 Watkins Street, Brooklyn, New York.

PAR. 2. Respondents are now and have been for several years last past engaged in the purchase of used sewing machines; in the rebuilding and reconditioning of said machines in the course of which certain worn parts are replaced with new parts; and in the advertising and selling of such rebuilt or reconditioned machines to dealers located in various States. Respondents also are engaged in the business of importing and selling new sewing machines manufactured in Japan and Spain. These machines are branded and sold under the names of Home Electric and BenDeluxe, respectively.

PAR. 3. The respondents cause and have caused their machines, when sold, to be shipped from their place of business in the State of New York to 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 machines in commerce among and between the various States of the United States.

PAR. 4. Respondents in the course of their business circulate catalogs, circulars and pamphlets among the trade in which the following statements appear:

1111

Complaint

Guaranteed factory rebuilt sewing machines.

Singer	Singer	White
66	127-4 & 27	Rotary
Round-Bobbin	Long Bobbin	Round Bobbin
Reconditioned Head	Reconditioned Head	Reconditioned Head

All sewing machines thoroughly rebuilt, reconditioned and guaranteed.

PAR. 5. By and through the use of the aforesaid statements, respondents represented that the Singer and White sewing machines, referred to, were rebuilt by or at the factory of the original manufacturer and as to the machines rebuilt by them, that genuine factory parts were used in the process of rebuilding.

PAR. 6. The said representations were false, misleading, and deceptive. In truth and in fact, none of the sewing machines sold by respondents were rebuilt by or at the factory of the original manufacturer, but such rebuilding was done by respondents themselves. The use of the word "guaranteed" in said advertising without disclosing the terms and conditions of the "guarantee" is confusing and misleading.

PAR. 7. Persons who buy machines which are represented as being rebuilt and reconditioned believe that such new parts as have been used to replace worn parts are genuine factory parts. In truth and in fact, such new parts as are used by respondents in rebuilding machines are not made by the factories which manufactured the machines but are made by others. There is a preference on the part of retailers and the public in buying rebuilt machines that such new parts as may have been added are genuine factory parts, such preference being based upon the belief that genuine factory parts are longer lasting, better fitting, more efficient and other reasons.

PAR. 8. In advertising the new sewing machines imported from Japan and sold under the name "Home Electric" and those imported from Spain and sold under the name "BenDeluxe," no mention is made in the advertising that said machines are imported from Japan and Spain, respectively. There are no marks on the BenDeluxe Sewing Machines other than the use of certain Spanish words, unintelligible to the average person, indicating that said machines are not of domestic manufacture.

It has been the custom for many years in the advertising of imported articles to state in the advertising matter that such articles are imported, the foreign country of origin usually being stated. In case no mention is made in such advertising matter that the articles are imported, retailers and the purchasing public have come to believe that the articles so advertised are of domestic manufacture.

PAR. 9. There is a preference on the part of many retailers and members of the purchasing public for products, including sewing machines, which are manufactured in this country.

PAR. 10. In the course and conduct of their business respondents are in competition in commerce with other individuals and with corporations and others who rebuild and sell sewing machines and also those who sell new sewing machines, including those which have been imported from other countries. Among such competitors are those who do not make any false representations concerning their said machines; who use genuine factory parts in the rebuilding process and who inform the public that machines imported by them are of foreign manufacture.

PAR. 11. The aforesaid statements and representations made by respondents and their failure to disclose material facts, as above set out, have had and now have the tendency and capacity to deceive and mislead a substantial number of retailers and the purchasing public into the erroneous belief that such statements and representations were and are true; and to induce the purchase of substantial quantities of said machines by reason of said erroneous and mistaken belief. As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors and as a consequence thereof substantial injury has been and is being done to competition in commerce.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and to competition in commerce 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 AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 16, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of the 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 a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing

1111

Findings

examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel supporting the complaint, and said hearing examiner, on August 2, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal, no oral argument having been requested; and the Commission, having issued its order granting said appeal in part and denying it in part and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Irving Epstein, Rita Epstein and Sam Epstein, operate as a partnership under the name of Modern Sewing Machine Company, with their principal office and place of business located at 109 Watkins Street, Brooklyn, New York. They are now and have been for several years last past engaged, among other activities, in the purchase of used sewing machines and the rebuilding and reconditioning thereof, in the course of which certain worn parts are replaced with new parts, and in the advertising and sale of such rebuilt or reconditioned machines to dealers located in various States of the United States. Respondents have caused said machines, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and have maintained at all times mentioned herein a course of trade in said machines in commerce among and between the various States of the United States.

PAR. 2. Respondents in the course of their business have circulated among the trade circulars or pamphlets in which the following statement appeared:

"Guaranteed factory rebuilt sewing machines

Singer	Singer	White
66	127-4 & 27	Rotary
Round-Bobbin	Long Bobbin	Round Bobbin
Reconditioned Head	Recondition Head	Recondition Head"

PAR. 3. By and through the use of said statement respondents represented, directly or by implication, that the Singer and White

sewing machines referred to were rebuilt by or at the factories of the original manufacturers, and as to such rebuilt machines, that genuine factory parts were used in the process of rebuilding. In truth and in fact, none of the said rebuilt sewing machines sold by respondents were rebuilt by or at the factory of the original manufacturer, but such rebuilding was done by respondents themselves.

PAR. 4. Persons who buy machines represented as being factory rebuilt believe that such new parts as have been used to replace worn parts are genuine factory parts. In truth and in fact, the new parts used by respondents in rebuilding the said machines were for the most part made, not by the factories which manufactured the machines, but by others. There is a preference on the part of retailers and the public in buying rebuilt machines that any new parts added be genuine factory parts.

PAR. 5. Such representations made by respondents as above set forth had the tendency and capacity to mislead and deceive retailers, and have placed in their hands a basis for misleading and deceiving the purchasing public, into the erroneous and mistaken belief that the same were true, thereby inducing the purchase of said rebuilt sewing machines.

PAR. 6. The complaint alleges that the respondents' use of the word "guaranteed" in connection with their rebuilt machines without disclosing the terms and conditions of the guarantee is confusing and misleading.

From the record it appears that respondents' practice, when complaint was made by a purchaser, was either to furnish another machine or refund the purchase price. Such a manner of making good respondents' advertised guarantee renders it highly unlikely that any purchaser would be confused or misled to his damage.

The complaint does not present an issue with respect to the adequacy of the disclosure of foreign origin of the machines imported by respondents from Japan upon the machines themselves, and this question is in consequence not before the Commission for determination. Even if the complaint be taken as raising such an issue with respect to Spanish machines imported and sold by respondents, the record does not show that the marks on the machines when sold were inadequate.

The complaint alleges that respondents' failure to disclose the foreign origin of their imported machines in their advertising had the capacity and tendency to induce the belief that "such statements and representations were and are true." No allegation that respondents made any statement or representation in their advertising concerning the origin of their imported machines appears in the complaint, and consequently

1111

Order

no issue is presented with respect to non-disclosure of foreign origin in respondents' advertising.

CONCLUSION

The acts and practices of the respondents as found in Paragraphs Two, Three and Four hereof are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Irving Epstein, Rita Epstein and Sam Epstein, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rebuilt sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, (1) through use of the words "factory rebuilt" or any expression of like import, that such sewing machines are rebuilt by or at the factories of the original manufacturers thereof, and (2) through the use of the words "factory rebuilt" or otherwise, that new parts installed in such rebuilt machines were made by the original manufacturers of the machines, contrary to the fact.

It is further ordered, That with respect to the issues raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

49 F. T. C.

IN THE MATTER OF

NYE N. SUSSMAN D. B. A. UTILITY BLANKET COMPANY
AND NYE MERCANTILE COMPANY

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 6062. Complaint, Nov. 21, 1952—Decision, Feb. 24, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain blankets in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and
- (b) Misbranded blankets in that, labeled as "100% reprocessed wool", they in fact contained substantial quantities of fibers other than wool:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.
Mr. George E. Steinmetz for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Nye N. Sussman, trading and doing business under the name of Utility Blanket Company as well as under the name of Nye Mercantile Company has violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Nye N. Sussman is an individual trading and doing business as Utility Blanket Company and as Nye Mercantile Company, with his principal place of business in both instances at 136 Greene Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondent has manu-