Syllabus

IN THE MATTER OF

ANTHONY AND LENA OLIVERIO D. B. A. DEL MAR SEWING MACHINE COMPANY

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

Docket 6013. Complaint, July 18, 1952—Decision, Apr. 2, 1953

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

There is among 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.

The words "Universal" and "Majestic" and other well-known 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; and 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 "Universal" and "Majestic" and other well known domestic names.

Where two partners engaged in the competitive interstate sale and distribution of sewing machines of which heads imported from Japan were a part—

(*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 attachment of a motor and, where displayed on a medallion, on the front of the arm, in some instances, was so small and indistinct as not to constitute adequate notice to the public, and upon which no other mark was placed to inform the public of said origin;

(*b*) Falsely represented through the featured use of the words "Universal", "Majestic" and other well known domestic trade or brand names on the front horizontal arm of the head, and use in advertising of such names, that the product was manufactured by or connected in some way with the well and favorably known firm long associated with the particular name, and thereby also enhanced the public belief that the sewing machines were of domestic origin;

(*c*) Represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic, and New Home portable sewing machines for $25, and that said machines were being offered during a clearance sale at a reduced price and for a limited time only, through such statements as "CLEARANCE SALE! WHILE THEY LAST! REBUILT PORTABLE ELECTRIC SEWING MACHINES, SINGERS, WHITES, DOMESTICS, NEW HOMES, $25. Hurry! Only a few machines left to clear out at this price. * * * ";

The facts being that said offer was not a genuine, bona fide offer, but was made to obtain leads as to persons interested in buying machines; after obtaining such leads they made no effort to sell the machines advertised, but attempted to sell different and more expensive ones, particularly those of which heads made in Japan were a part; the alleged clearance sales actually were continuous offers over long periods of time; and the price set out in their advertisements was the usual and customary one for said rebuilt machines; and

(*d*) Represented that their portable machines were customarily sold to members of the public for $169.50 through their advertising; when in fact said sum was wholly fictitious and greatly in excess of the amount usually charged:

With tendency and capacity to mislead a substantial portion of the purchasing public and thus induce numbers thereof to purchase said machines and with effect of unfairly diverting to them substantial trade in commerce from their competitors, among whom were included sellers of domestic sewing machines, and sellers also of the imported product, of whom some adequately indicated the foreign origin of the product or parts; to the 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 competitors, and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart for the Commission.

Depaoli & Nicco, 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 Anthony Oliverio and Lena Oliverio, copartners, doing business as Del Mar 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 Anthony Oliverio and Lena Oliverio are copartners doing business under the name of Del Mar Sewing Machine

Company with their office and principal place of business located at 3230 Mission Street, San Francisco, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the course and conduct of their business respondents cause their said product, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other 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 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. Respondents place no other marks on their imported sewing machine heads or on complete sewing machines, showing foreign origin, or otherwise inform the public that the heads are imported, before they are offered for sale to the 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 that they are of foreign origin, or if marked, and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

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

PAR. 5. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines, of which said heads are a part, because of said 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. 6. Respondents use the words "Universal" and "Majestic" and other well known 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 words "Universal" and "Majestic" and the other well known 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. 7. By using trade or brand names such as "Universal" and "Majestic" and other well known domestic 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 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 "Universal" and "Majestic" and other well known domestic names. The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

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

CLEARANCE SALE!

WHILE THEY LAST!
REBUILT PORTABLE ELECTRIC
SEWING MACHINES

SINGERS
WHITES
DOMESTICS $25.00
NEW HOMES

. New Motor . New Foot Control!
New Case! . New Wiring and Plugs!
5-Year Parts Guarantee!
Hurry! Only a few machines left to clear
out at this price. First come — first
served. Sorry, cash and carry only!
Open Monday Eve. 'Till 9
DEL MAR SEWING MACHINE CO.
Sales and Service Authorized Necchi Dealer
3230 Mission Street Near Valencia . MI. 7-5143

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic and New Home rebuilt portable electric sewing machines for the sum of $25.00 and that said machines were being offered during a clearance sale at a reduced price and for a limited time only.

The aforesaid representations were false, misleading and deceptive. In truth and in fact the offer to sell rebuilt Singer, White, Domestic and New Home Sewing Machines for $25.00 was not a genuine or bona fide offer, but was made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. After obtaining such leads, respondents make no effort to sell the sewing machines advertised but attempt to sell different and more expensive sewing machines, particularly machines of which heads made in Japan are a part. Respondents' alleged clearance sales were not clearance sales at a reduced price for a limited time only, but actually were continuous offers over long periods of time and the price set out in their advertisements was the usual and customary price at which said rebuilt sewing machines were offered for sale.

PAR. 10. Respondents, in their advertising, make further statements, such as the following:

(Picturization of portable electric sewing machine)
(Electric Sewing machines $169.50)

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that their portable electric sewing machines were customarily sold to members of the purchasing public for the sum of $169.50. In truth and in fact, the sum of $169.50 is a wholly fictitious price and greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondents.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true and to induce the purchase of substantial quantities of said sewing machines as a result of this erroneous and mistaken belief.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also

the use of trade or brand names such as "Universal" and "Majestic" and 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 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.

PAR. 14. 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.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 18, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint, hereby

(1) Admit all the jurisdictional allegations set forth in the complaint.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on April 2, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Anthony Oliverio and Lena Oliverio are copartners doing business under the name of Del Mar Sewing Machine Company with their office and principal place of business located at 3230 Mission Street, San Francisco, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the course and conduct of their business respondents cause their said product, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other 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 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. Respondents place no other marks on their imported sewing machine heads or on complete sewing machines, showing foreign origin, or otherwise inform the public that the heads are imported, before they are offered for sale to the 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 that they are of foreign origin, or if marked, and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

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

PAR. 5. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines, of which said heads are a part, because of said 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. 6. Respondents use the words "Universal" and "Majestic" and other well known 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 words "Universal" and "Majestic" and the other well known 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. 7. By using trade or brand names such as "Universal" and "Majestic" and other well known domestic 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 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 "Universal" and "Majestic" and other well known domestic names.

The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

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

CLEARANCE SALE!
WHILE THEY LAST!

REBUILT PORTABLE ELECTRIC
SEWING MACHINES
SINGERS
WHITES
DOMESTICS
NEW HOMES
$25.00
New Motor . New Foot Control!
New Case! . New Wiring and Plugs!
5-Year Parts Guarantee!
Hurry! Only a few machines left to clear
out at this price. First come—first
served. Sorry, cash and carry only!

Open Monday Eve. 'Till 9

DEL MAR SEWING MACHINE CO.
Sales and Service Authorized Necchi Dealer
3230 Mission Street Near Valencia. MI. 7-5143

By and through the use of the afore-mentioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic and New Home rebuilt portable electric sewing machines for the sum of $25.00 and that said machines were being offered during a clearance sale at a reduced price and for a limited time only.

The aforesaid representations were false, misleading and deceptive. In truth and in fact the offer to sell rebuilt Singer, White, Domestic and New Home Sewing Machines for $25.00 was not a genuine or bona fide offer, but was made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. After obtaining such leads, respondents make no effort to sell the sewing machines advertised but attempt to sell different and more expensive sewing machines, particularly machines of which heads made in Japan are a part. Respondents' alleged clearance sales were not clearance sales at a reduced price for a limited time only, but actually were continuous offers over long periods of time and the price set out in their advertisements was the usual and customary price at which said rebuilt sewing machines were offered for sale.

PAR. 10. Respondents, in their advertising, make further statements, such as the following:

(Picturization of portable electric sewing machine)
(Electric Sewing machines $169.50)

By and through the use of the aformentioned statements, respondents represented, directly or by implication, that their portable electric sewing machines were customarily sold to members of the purchasing public for the sum of $169.50. In truth and in fact, the sum of $169.50 is a wholly fictitious price and greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondent.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true and to induce the purchase of substantial quantities of said sewing machines as a result of this erroneous and mistaken belief.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also the use of trade or brand names such as "Universal" and "Majestic" and 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 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.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents'

competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Anthony Oliverio and Lena Oliverio, individually and as copartners doing business as Del Mar Sewing Machine 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 the country of origin thereof.

2. Using the words "Universal" or "Majestic," 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 manufacturer.

3. Representing, directly or by implication, that certain amounts are the prices of their sewing machines when such amounts are in excess of the prices at which their said sewing machines are ordinarily sold in the usual and regular course of business.

4. Representing that certain sewing machines are offered for sale, when such offer is not a bona fide offer to sell the machines so offered.

5. Representing, directly or by implication, that the price at which any of respondents' products are offered for sale is a reduced price, or for a limited time only, or offered only during a clearance sale, when such price is, in fact, the customary price at which said products are regularly offered for sale.

It is further ordered, That the respondents, Anthony Oliverio and Lena Oliverio, copartners doing business as Del Mar Sewing Machine Company, shall within sixty 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.

[S] JOHN M. FILIPPI

DEPALOI and NICCO, John M. Fillippi, 3295 Mission Street, San Francisco, California.

Attorney for Respondents.

DECEMBER 18, 1952

[S] ANTHONY OLIVERIO
AND
LENA OLIVERIO

ANTHONY OLIVERIO and LENA OLIVERIO, copartners doing business as DEL MAR SEWING MACHINE COMPANY, 3230 Mission Street, San Francisco, California.

Respondents.

DECEMBER 18, 1952

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 2nd day of April, 1953.

Syllabus

IN THE MATTER OF

JOSEPH GLUCK AND 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 AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 6038. Complaint, Sept. 4, 1952—Decision, Apr. 2, 1953

The British Isles have for many years been a source of some of the finest fabrics imported into the United States and there is a preference on the part of a substantial portion of the purchasers of cloth in this country for suits made from fabrics imported from that source.

Where a corporation and its two officers, engaged in the purchase from mills and jobbers of fabrics which it cut into suit lengths and sold and distributed to dealers—

(*a*) Represented directly and by implication that said fabrics were imported from England through labeling the separate lengths with such typical matter as "HEATH ENGLAND", accompanied by a representation of a lion and a unicorn within a diamond-shaped parallelogram, and followed by "SUFFIELD LONDON"; notwithstanding the fact that said fabrics were woven and manufactured in the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said fabrics were imported from England and thereby induce its purchase of substantial quantities thereof:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce; and,

Where said corporation and individuals, engaged in the sale and distribution in commerce of wool products and defined in the Wool Products Labeling Act—

(*b*) Misbranded certain of said products, not composed in whole of wool, in that they were not labeled to show the wool content as required by said Act;

With result of placing in the hands of retailers and others a means and instrumentality whereby members of the purchasing public had been and might be misled and deceived as above set forth:

Held, That aforesaid practices constituted a violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and unfair and deceptive acts and practices within the intent and meanings of the Federal Trade Commission Act.

As respects the charge in the complaint that respondents, engaged in the interstate sale and distribution of rayon fabrics which had the feel and appearance of wool, affirmatively and by implication represented the same as wool, and thereby misled and deceived a substantial portion of the purchasing public in said respect: said charge was not supported by reliable, probative