

IN THE MATTER OF
FEDERAL CORDAGE COMPANY, 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 5951. Complaint, Jan. 25, 1952—Decision, Apr. 28, 1953

The preference existing among a substantial segment of the consuming public for merchandise which is composed of new and unused materials is common knowledge and obtains in virtually all fields of merchandising; and in the absence of adequate disclosure or explanation, merchandise which resembles and has the appearance of merchandise composed of new material, but which in fact is composed of reclaimed materials, may be selected and purchased by the public as products composed of new and unused material.

Rope and cordage made from new and unused manila fiber is more desirable than that made from used or reclaimed fiber, the yarns made of the new fiber having greater tensile strength than do those obtained from used hawsers and ropes; and while the difference in appearance between rope and cordage made from new and unused fiber and that made from used or reclaimed fiber is such that it can generally be detected by an expert in the trade, a substantial portion of the purchasing public would find it difficult to determine such difference, particularly where they do not have before them both types of rope to compare.

"Manila" is a fiber obtained from a plant grown mainly in the Philippine Islands and the East Indies and used in the manufacture of rope, and the word "Manila", when used in referring to rope or cordage, used alone and without any qualifying language or other words of disclosure, is understood in the rope and cordage business and among a substantial portion of the purchasing public, to refer to rope or cordage made of new and unused Manila fiber.

Where a corporation and its two officers, engaged in the manufacture of rope and cordage of which a substantial portion was made from fibers reclaimed from hawsers and rope, mostly previously used, purchased from the Maritime Commission, the Navy, and other government agencies, and, to a lesser extent, from other dealers in rope and which was composed also to a substantial extent of Manila fiber; and in the interstate sale and distribution thereof to customers who frequently resold it in the same package in which it was received from them, in competition with others engaged in the manufacture and sale or distribution of rope and cordage—

- (a) Made use of the word "Manila" in identifying such rope in sales to dealers, jobbers, distributors, and others, through such statements as "Manila Rope" or "Manila" on the corporate invoices, upon which appeared, beneath the corporate name, the words "Manufacturers of Reprocessed Cordage", but without any qualifying language indicating that said product was made from used or reclaimed Manila fiber; and

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(b) Similarly designated, without disclosure, through the stenciled or printed word "Manila", the burlap or paper containers or wrappers in which the product was packed, and within which containers, and thus not ordinarily seen by the customer prior to removal, there was enclosed at the end of each coil a tag giving instructions as to the method by which the rope should be removed from the package, with the words "Reprocessed Cordage" at the bottom;

With the result of placing in the hands of dealers a means and instrumentality whereby they might mislead the purchasing public as to the nature and quality of said products; and with tendency and capacity to mislead and deceive a substantial portion of said public into the erroneous belief that their rope and cordage were made from new and unused Manila fiber, and thereby induce its purchase of a substantial quantity; whereby trade in commerce was diverted unfairly to them from their competitors, and substantial injury was done by them to 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 competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

While the record contained indication that the corporate respondent might be the only concern currently engaged in fabricating rope and cordage from fibers reclaimed from previously fabricated and used rope and cordage, respondents' products, when sold, were distributed through channels generally similar to those through which other rope and cordage products were marketed, and respondents, in the course and conduct of their business, were therefore in active and substantial competition with concerns engaged in the manufacture and sale or distribution of rope and cordage.

The fact that, as respondents contended, they were widely known in the trade as reproprocessors of cordage, as disclosed at the top of their invoices, did not relieve them of the duty to make a full disclosure with respect to the contents of their products identified solely as "Manila", or overcome the tendency and capacity of their method of identification to mislead and deceive their customers, some of whom might not previously have dealt with them, particularly since respondents admittedly sold new, as well as rope and cordage fabricated from previously used and other rope.

The fact that the aforesaid tag used by them contained the language "Reprocessed Cordage" was not sufficient to overcome the misleading and deceptive character of their method of identifying their product on its package as "Manila", since it was clear from its wording that the tag was intended primarily as a method of instructing the customer how to remove the rope from the package and not to advise him expressly of the fiber content of the product, and since the tag, moreover, as above noted, was enclosed within the package and would ordinarily not be seen until the customer was about to remove the rope.

As respects the allegation of the complaint that manufacturers, distributors, and sellers of rope and cordage have adopted generally the custom of marking or branding their products so as to indicate the presence of used or reclaimed fiber, and that failure to so mark or brand leads purchasers to believe that the product contains only new fiber; the record did not indicate

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that there were any concerns other than corporate respondent then engaged in processing reclaimed rope, and the testimony contained indicated that distributors or other resellers of respondents' rope and cordage affixed no additional markings upon the wrappers of such merchandise to adequately disclose that the fiber had been reclaimed from previously used or other rope.

In the foregoing proceeding, the Commission was of the view that, irrespective of whether any generic name for the particular reclaimed fiber or fibers contained in respondents' products might be used in advertising for or on such merchandise, the public interest required that respondents, in connection with the future conduct of their business, be directed to adequately reveal the presence of reclaimed fibers in their rope and cordage containing reclaimed Manila fibers and the presence of other reclaimed fibers contained in other of their rope and cordage, the appearance of which simulated merchandise made of new and unused materials.

Before *Mr. John Lewis*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Milton R. Gould and *Mr. Harry W. Pitt*, 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 Federal Cordage Company, Inc., a corporation, and Seymour Guttman and Abe Weinstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Federal Cordage Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 57-02 48th Street, Maspeth, Queens, Long Island, New York.

Respondents, Seymour Guttman and Abe Weinstein, are president and treasurer, and vice president and secretary, respectively, of respondent, Federal Cordage Company, Inc., and as such formulate, direct and control its policies and practices. Their business address is the same as that of the corporate respondent.

PAR. 2. The corporate respondent is now, and for more than one year last past has been, engaged in the business of manufacturing remade rope and cordage from reclaimed Manila fiber, and in the sale and distribution thereof. Respondent causes said rope and cord-

age, when sold, to be transported from its place of business in the State of New York to its customers located in other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rope and cordage sold and distributed by it in commerce among and between the various States of the United States. Its business in such commerce has been and is substantial.

PAR. 3. In the course and conduct of its business, respondent is in active and substantial competition with other corporations, and with firms, partnerships and individuals engaged in the sale and distribution of rope and cordage in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of identifying and describing their rope and cordage, respondents caused the word "Manila" to be placed on announcements and invoices sent to dealers, jobbers and distributors and stenciled on the containers of said products.

PAR. 5. A substantial portion of the purchasing public believe that the word "Manila," used in connection with the rope and cordage, serves as a representation and means that the product is rope or cordage made of new and unused manila fiber.

PAR. 6. The use by respondents of the word "Manila" as aforesaid, is false, misleading and deceptive. In truth and in fact, respondents' rope and cordage is not manufactured from new and unused manila fibers but the fibers from which it is made are obtained from reclaimed or used rope and hawsers, which fact is not disclosed in any manner by respondents prior to the purchase of their product.

PAR. 7. While there is a difference in the appearance of rope or cordage manufactured from new material from that manufactured from used or reclaimed material which an expert in the rope trade might detect, a substantial portion of the purchasing public cannot determine such difference by the appearance of the rope or cordage.

PAR. 8. Manufacturers, distributors and sellers of rope and cordage have adopted generally the custom and practice, which is known to purchasers and users of such products, of so marking or branding their products as to indicate the presence of used or reclaimed fiber when such fiber is used in the manufacture thereof and to fail to so mark or brand such products containing used or reclaimed fiber leads purchasers to believe that such rope and cordage contains no used or reclaimed fiber but contains only new fiber.

PAR. 9. The cost to respondents of manufacturing their rope and cordage from used or reclaimed fiber is much less than the cost of manufacturing said products using new fiber and respondents are

thereby enabled to sell their said rope and cordage to retailers, jobbers, wholesalers and to the purchasing public at substantially lower prices than can manufacturers of manila rope and cordage made from new material.

PAR. 10. Rope and cordage made from new and unused manila fiber is more desirable in many respects than when made from used and reclaimed fiber. There is a preference on the part of the purchasing public for such products made from new and unused over that made from used or reclaimed fiber.

PAR. 11. Respondents' practice of selling and distributing their rope and cordage without disclosing that it is made from used or reclaimed fibers places in the hands of dealers a means and instrumentality by which they may mislead and deceive the purchasing public as to the quality and value of said products.

PAR. 12. The use by respondents of the word "Manila" in describing their rope and cordage, as hereinabove set out, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said rope and cordage are made from new and unused manila fiber, and because of such mistaken and erroneous belief to purchase a substantial quantity of respondents' said rope and cordage, with the result that trade in commerce has been diverted unfairly to the respondents from their competitors. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 13. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 January 25, 1952, issued and subsequently served its complaint in this proceeding upon respondents Federal Cordage Company, Inc., a corporation, and Seymour Guttman and Abe Weinstein, as officers of said corporation, 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 that Act. After the filing by respondents of their joint answer to the complaint, hearings were held at which testimony and other evi-

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dence in support of and in opposition to the allegations of the 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. On July 1, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceedings, placed this case on the Commission's own docket for review and on February 18, 1953, it issued and thereafter served upon the parties its order affording the respondents an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown in the tentative decision attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and it appearing upon such consideration that the order contained in said tentative decision was directed to the individuals therein named both in their capacity as individuals and in their representative capacity as officers of the respondent corporation whereas said order should have been limited to naming them in their representative capacity aforesaid; and the Commission, having duly considered this case and being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Federal Cordage Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 57-02 48th Street, Maspeth, Queens, Long Island, New York. Respondents Seymour Guttman and Abe Weinstein are president and treasurer, and vice-president and secretary, respectively, of respondent Federal Cordage Company, Inc., and as such formulate, direct and control its policies and practices. Their business address is the same as that of the corporate respondent.

PAR. 2. The corporate respondent is now and for more than one year last past has been, engaged in the business of manufacturing rope and cordage, and in the sale and distribution thereof. A substantial portion of the rope and cordage which it fabricates is made from reclaimed fibers obtained from hawsers and rope which it purchases from the Maritime Commission, the Navy, and other Government

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agencies, and to a lesser extent from other dealers in rope. Most of the hawsers and rope purchased for this purpose have previously been used but a minor portion, although in fabricated form, has not actually been used.

Respondents cause their said rope and cordage, when sold, to be transported from their place of business in the State of New York to customers located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said rope and cordage sold and distributed by them in commerce among and between the various States of the United States. Their business in such commerce has been and is substantial.

Although the record herein contains indication that the corporate respondent may be the only concern currently engaged in fabricating rope and cordage from fibers reclaimed from previously fabricated and used rope and cordage, respondents' aforesaid products, when sold, are distributed however through channels generally similar to those through which other rope and cordage products are marketed. In the course and conduct of their business, as aforesaid, respondents are in active and substantial competition, therefore, with corporations, firms, partnerships and individuals engaged in the manufacture and sale or the distribution of rope and cordage.

PAR. 3. A substantial portion of the rope processed and sold by the corporate respondent is made from previously used and other rope composed of Manila fiber. In identifying such rope in sales to dealers, jobbers, distributors and others, respondents have, on the invoices of the corporate respondent, described such rope as "Manila Rope" or as "Manila." Such identification on invoices of the product sold has not contained any qualifying language indicating that said rope is made from used or reclaimed Manila fiber. There does, however, appear at the top of the invoices of the corporate respondent, immediately underneath its name, the words "Manufacturers of Reprocessed Cordage."

After processing has been completed, the said rope is packed, in coil or half-coil quantities, in burlap or paper containers or wrappers on which is stenciled or printed the identifying language "Manila," without any disclosure being imprinted thereon to indicate that the rope enclosed within is made from Manila fibers reclaimed from previously used or other rope. However, at the end of each coil of rope enclosed within the package, respondents have attached a tag giving instructions as to the method by which such rope should be removed from the package, at the bottom of which tag appear the words "Reprocessed Cordage."

PAR. 4. "Manila" is a fiber obtained from a plant, grown mainly in the Philippine Islands and the East Indies, which is used in the manufacture of rope. In the rope and cordage business and among a substantial portion of the purchasing public, the word "Manila," when used in referring to rope or cordage, is understood to refer to rope or cordage made of new and unused Manila fiber. Although it may be, as respondents contend upon the basis of the instant record, that rope made from reclaimed Manila fibers is still generically Manila rope, it is nevertheless clear therefrom, and it is so found, that when the word "Manila" is used alone, without any qualifying language or other words of disclosure, it is understood to mean rope and cordage made from new and unused Manila fiber.

PAR. 5. The use by respondents of the word "Manila," as found above, is false, misleading and deceptive since a substantial portion of the rope manufactured by them is not made from new and unused fiber but from used or reclaimed fiber, which fact is not adequately revealed by respondents in the sale of their product. The fact that, as respondents contend, they are widely known in the trade as reproducers of cordage, which fact is made known at the top of their invoices, does not relieve them of the duty to make a full disclosure with respect to the contents of their product identified solely as "Manila," or overcome the tendency and capacity of their method of identification to mislead and deceive their customers, some of whom may not have previously dealt with respondents, particularly since respondents admittedly sell new as well as rope and cordage fabricated from previously used and other rope. The fact that the tag used by them contains the language "Reprocessed Cordage" is not sufficient to overcome the misleading and deceptive character of their method of identifying their product on its package as "Manila," since it is clear from its wording that the tag is intended primarily as a method of instructing the customer how to remove the rope from the package, not to advise him expressly of the fiber content of respondents' product, and, moreover, such tag is enclosed within the package and would ordinarily not be seen until the customer was about to remove the rope.

PAR. 6. There is some difference in appearance between rope and cordage manufactured from new fiber and that made from used or reclaimed fiber, the former being of somewhat lighter color and smoother texture than the latter. The difference between these two types of rope, particularly with respect to color, depends in large measure on the extent to which the rope from which the reprocessed rope is made has previously been used. Thus, a reprocessed rope made from a hawser which has been used in the water for a considerable period of time would be much darker than one made from a hawser

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that had not actually been used or had only been in the water for a short period of time. Rope made from the latter type of hawser would more nearly tend to resemble rope made from virgin fiber. Although the difference in appearance between rope and cordage made from new and unused fiber and that made from used or reclaimed fiber is such that it can generally be detected by an expert in the trade, a substantial portion of the purchasing public would find it difficult to determine such difference, particularly where they do not have before them both types of rope to compare.

PAR. 7. Rope and cordage made from new and unused Manila fiber is more desirable than that made from used or reclaimed fiber. Yarns composed of new fiber have greater tensile strength than do those obtained from used hawsers and rope.

PAR. 8. The record discloses that respondents' customers frequently resell the rope and cordage in the same package in which it was received from respondents. It is therefore obvious, and it is so found, that respondents' practice of selling and distributing their rope and cordage identified on the package solely as "Manila," without disclosing that it is made from used or reclaimed fiber, has placed in the hands of dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the nature and quality of said products.

PAR. 9. The use by respondents of the word "Manila" in describing their rope and cordage, as hereinabove found, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said rope and cordage are made from new and unused Manila fiber, and because of such mistaken and erroneous belief to purchase a substantial quantity of respondents' said rope and cordage, with the result that trade in commerce has been diverted unfairly to the respondents from their competitors. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 10. The complaint has alleged also that manufacturers, distributors and sellers of rope and cordage have adopted generally the custom of marking or branding their products in such manner as to indicate the presence of used or reclaimed fiber and that failure to so mark or brand such products leads purchasers to believe that such rope and cordage contains no used or reclaimed fibers, but only new fiber. As previously noted, respondents' disclosure respecting the presence of used or reclaimed fiber in its products has not been adequate. The record does not indicate that there are any concerns other than corporate respondent presently engaged in processing reclaimed rope.

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The testimony adduced, moreover, contains indication that distributors or other resellers of respondents' rope and cordage affix no additional markings upon the wrappers of such merchandise to adequately disclose that the fiber has been reclaimed from previously used or other rope. From its inspection of samples of respondents' rope introduced as exhibits in this proceeding, one of which was manufactured from new and unused Manila fibers and the other processed from reclaimed Manila fibers, the Commission notes that, while these articles are not entirely identical in appearance, rope made from reclaimed fibers simulates in substantial measure the appearance of rope made of new and unused fibers.

In the absence of adequate disclosure or explanation, merchandise which resembles and has the appearance of merchandise composed of new materials but which, in fact, is composed of reclaimed materials may be selected and purchased by the public as products composed of new and unused materials. The preference existing among a substantial segment of the consuming public for merchandise which is composed of new and unused materials is, of course, common knowledge and obtains in virtually all fields of merchandising. In these circumstances, the Commission is of the view that, irrespective of whether any generic name for the particular reclaimed fiber or fibers contained in respondents' products may be used in advertising for or on such merchandise, the public interest requires that respondents, in connection with the future conduct of their business, be directed to adequately reveal the presence of reclaimed fibers in their rope and cordage containing reclaimed Manila fibers and the presence of other reclaimed fibers contained in other of their rope and cordage, the appearance of which latter merchandise simulates merchandise made of new and unused materials.

CONCLUSION

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

ORDER

It is ordered, That the respondent Federal Cordage Company, Inc., a corporation, and its officers, agents, representatives and employees, and the respondents Seymour Guttman and Abe Weinstein, as officers of said corporation, directly or through any corporate or other device,

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in connection with the offering for sale, sale or distribution of rope or cordage in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that rope or cordage made in whole or in part of used or reclaimed fiber is made of new or unused fiber.

(2) Using the word "Manila" or any word of similar import or meaning to designate, describe, or refer to rope or cordage not composed wholly of new and unused Manila fibers; *provided, however*, that nothing herein shall prevent respondents from using the word "Manila," when properly qualified, to describe any product composed in part of new and unused Manila fibers, nor shall it prevent respondents from using such word to describe any used or reclaimed Manila fibers contained in their rope and cordage if it is clearly disclosed in immediate conjunction therewith on the same invoice, package, container, label, tag, or other physical instrument on which said word appears, and in connection with any oral statement in which such word is used, that said rope or cordage is made, in whole or in part, from used or reclaimed fibers.

(3) Offering for sale, selling, or delivering to dealers, or others, rope or cordage containing used or reclaimed Manila fibers, or any rope or cordage containing reclaimed fibers other than reclaimed Manila fibers, the appearance of which latter product simulates rope or cordage composed of new and unused materials, unless it is disclosed, in words plainly legible to purchasers, on any invoices therefor and upon said rope and coil wrapper that said products are made, in whole or in part, of reclaimed or used fibers.

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.

Commissioner HOWREY not participating.

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IN THE MATTER OF

SORITE SEWING MACHINE COMPANY, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 6049. Complaint, Sept. 26, 1952—Decision, Apr. 28, 1953*

Where articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked to disclose that they are of foreign origin, or if such markings are 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 large number who have a decided preference for products originating in the United States over products originating, in whole or in part, in foreign countries, including sewing machine heads imported from Japan.

There are among retailers and ultimate purchasers, many persons who prefer to deal directly with the manufacturer of sewing machines.

There is a preference among many members of the purchasing public for products manufactured by well-known and long-established American concerns.

Where two corporations and their common officers, engaged in the competitive interstate sale and distribution of sewing machines, and of imported sewing machine heads, on the back of the vertical arm of which the word "Japan" became covered in attaching the motor, and on the front of some of which a readily removable medallion displayed the word in so small and indistinct fashion as not to constitute adequate public notice that said heads were imported—

(a) Failed adequately to disclose on their said sewing machine heads by marks which could not be removed, hidden, or obliterated, that they were manufactured in Japan;

With tendency and capacity to lead members of the purchasing public into the erroneous belief that the product was of domestic origin and thereby cause substantial numbers thereof to purchase the complete machines of which said heads were a part;

(b) Represented falsely, directly and by implication, in their advertising, and by letterheads and invoices that they manufactured the sewing machine heads and sewing machines sold by them, through the use of the word "manufacturers" as included in the statements: "Manufacturers * * * sewing machines * * *"; "MR. RETAILER: Deal directly with the manufacturers. Eliminate the middlemen and save the distributors mark-up.";

(c) Falsely represented that certain of their machines and heads were manufactured in Washington, D. C., through displaying thereon the legend "Simplex Sewing Machine Company, Simplex, Washington, D. C."; notwith-