

Syllabus

IN THE MATTER OF

ROYAL SEWING MACHINE CORPORATION 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 5892. Complaint, June 27, 1951—Decision, May 5, 1953

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

There is among the members of the purchasing public a substantial number which has a decided preference for products, including sewing machines, manufactured in the United States over products manufactured in foreign countries.

Where a corporation and its three officers, engaged in the interstate sale and distribution of complete sewing machines, and of sewing machine heads imported from Japan, upon which the words "Made in Japan" or "Made in Occupied Japan" on the back of the vertical arm became covered when a motor was attached, and on the front of which arm certain bands displaying similar words were wholly inadequate as such a disclosure by reason of their small size and location—

Failed to disclose adequately on their said sewing machines that the heads were manufactured in Japan;

With capacity and tendency to lead members of the purchasing public into the erroneous belief that said heads and the machines of which they were an essential element were of domestic manufacture, and thereby induce their purchase of said machines:

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.

As respects charges of the complaint that respondents, through the use of the name "Royal" on their machines, falsely represented that they were manufactured by the Royal Typewriter Company, and that they misrepresented the status of the corporate respondent as a manufacturer: the evidence did not sustain the first allegation, or disclose any basis for a finding that the public interest required corrective action concerning the second.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. William T. Taggart and *Mr. John C. Williams* for the Commission.

Mr. William King, of Brooklyn, N. Y., for respondents.

Complaint

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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 Royal Sewing Machine Corporation, a corporation, and Jacob Schneider, Jacob Epstein and Selia Epstein, 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 Royal Sewing Machine Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1801 Pitkin Avenue, Brooklyn, New York. Respondents, Jacob Schneider, Jacob Epstein and Selia Epstein are President, Vice-President and Secretary-Treasurer, 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 completed sewing machines of which said heads are a part to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public

and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

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 machine heads.

PAR. 5. Respondents have adopted and use the word "Royal" as the trade or brand name for their said machine heads, which word is embossed or printed on the front horizontal arm of the head in large conspicuous letters and use such trade name in their advertising matter. The word "Royal" is the name or part of the name of a number of corporations transacting and doing business in the United States which are and have been long established in various industries and which are and have been well and favorably known to the purchasing public. Some of these corporations use the word "Royal" as a trade name, mark or brand for products of the same general class as sewing machines, particularly "Royal" typewriters manufactured by the Royal Typewriter Company.

PAR. 6. By using said trade name "Royal," respondents represent to the purchasing public that their products are manufactured by the well known firm with which said name has been long associated, which is contrary to the fact.

PAR. 7. Respondents on their invoices make such statements as the following:

Manufacturers and distributors of
sewing machines . . .

By and through the use of the aforesaid statement, respondents represent to dealers that they manufacture the sewing machines sold by them. In truth and in fact, respondents do not own or control a factory in which their sewing machines are manufactured. Substantial numbers of retailers prefer to deal with concerns who manufacture the products sold by them.

PAR. 8. There is a preference among dealers for products manufactured by favorably known and long established concerns whose identity is connected with the word "Royal."

PAR. 9. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the manufacturer thereof.

PAR. 10. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 11. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in occupied Japan, and the use of the word "Royal" as a trade or brand name therefor, 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 firm with which the said trade name has long been associated and to induce members of the purchasing public to purchase sewing machines of which these 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. 12. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 27, 1951, issued and subsequently served its complaint in this proceeding upon 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 said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 consideration by said hearing examiner on the complaint, the answer thereto and the testimony and other evidence, and said hearing examiner on September 15, 1952, 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

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Findings

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 denying said appeal, but being of the opinion that the initial decision of the hearing examiner should be modified in certain respects, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its 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 Royal Sewing Machine Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1801 Pitkin Avenue, Brooklyn, New York. Respondents, Jacob Schneider, Jacob Epstein and Selia Epstein are President, Vice-President and Secretary-Treasurer, 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 completed sewing machines of which said heads are a part to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. The sewing machine heads imported from Japan by respondents during 1949 and a part of 1950 usually bore the phrase "Made in Japan" or "Made in Occupied Japan" stenciled or printed on the back of the vertical arm. Respondents generally sold these heads "as is" but a substantial number were sold equipped with accessories to retail dealers. Before a completed sewing machine, of which one of these heads formed a part, was offered to the purchasing public, respondents, or the dealers to whom the heads were sold, attached an electric motor, usually made in the United States and so marked, to the head on the back of the vertical arm so that the aforesaid words of origin were effectively concealed by the motor. During 1950 and

Conclusion

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1951 some of the heads when received by and when sold by respondents had affixed to the front of the vertical arm small gilt or bronze colored metal bands upon which "Made in Japan" or "Made in Occupied Japan" or "Japan" appeared. These words indicating origin, however, were of such a size and the band on which they were placed so located as to be wholly inadequate as a disclosure of the Japanese origin of the machine.

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 to show 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 of domestic origin.

There is among the members of the purchasing public a substantial number which has a decided preference for products, including sewing machines, manufactured in the United States over products manufactured in foreign countries.

PAR. 5. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, have provided said dealers with means and instrumentalities whereby they may mislead and deceive the purchasing public as to the place or origin of said heads and the sewing machines of which said heads are essential elements.

PAR. 6. The failure of respondents to disclose adequately on the sewing machine heads, sold by them as aforesaid, that they are manufactured in Japan, has the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that the said heads and the sewing machines of which they are an essential element are of domestic manufacture, and to induce members of the purchasing public to purchase said sewing machines because of such erroneous and mistaken belief.

PAR. 7. The complaint alleges that respondents by the use of the name "Royal" for their machines have falsely represented that they were manufactured by the Royal Typewriter Company, and that they have misrepresented the status of the corporate respondent as a manufacturer. The evidence does not sustain the first allegation, nor does it disclose any basis for a finding that the public interest requires corrective action concerning the second.

CONCLUSION

The acts and practices of respondents as found in Paragraphs Three, Five and Six hereof are all to the prejudice and injury of the public

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Order

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 respondent Royal Sewing Machine Corporation a corporation, and its officers, agents, representatives and employees, and the respondents Jacob Schneider, Jacob Epstein and Selia Epstein, as officers of said corporation, directly or through any corporate or other device, in connection with the sale 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:

Offering for sale, selling or distributing foreign made sewing machine heads or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

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.

IN THE MATTER OF
NATIONAL EDUCATORS, 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 5975. Complaint, Mar. 27, 1952—Decision, May 5, 1953

Where a corporation and its controlling officer, engaged in the interstate sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and Quarterly Loose-Leaf Extension Service supplements thereto, published under the name of "World Progress"; in selling said combination under a plan or scheme in accordance with which their agents, calling upon doctors, nurses, and other professional persons in hospitals and elsewhere—

- (a) Represented falsely to such prospects that they were being offered a 10-volume set of the encyclopedia free because of their professional standing, thus indicating that such offer was made only to selected individuals;
- (b) Represented falsely that such offer was made solely for advertising purposes or that those solicited would receive the encyclopedia free if within 30 days they would furnish a letter recommending it or giving their opinion on it;
- (c) Represented that the prospects would obtain a set of the encyclopedia free if they purchased the Quarterly Extension Service Supplement for 10 years at \$9.95 or some approximate amount per year; and
- (d) Represented that only the supplement was being sold and the encyclopedia was free and that the sum of \$99.50 was the total amount required to be paid;

The facts being they furnished no encyclopedia free and the aforesaid amount was the regular price charged for the combination of encyclopedia and supplements; the offer was available to anyone willing to pay said regular price; and they failed to make known to purchasers that, in addition to the amount charged and represented as the total required to be paid, an additional charge of \$1.85 per year was made, allegedly to cover mailing expenses; and

- (e) In some instances sent sets of their encyclopedia to persons who had not contracted to buy them and then endeavored to enforce payment by stating that such consignees were legally or otherwise obligated to pay therefor;
- With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with effect of thereby inducing purchase of said encyclopedia and supplement:

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