

Syllabus

IN THE MATTER OF
 RODNEY DISTRIBUTORS, INC. (D. B. A. ILLINOIS SEWING
 MACHINE DISTRIBUTORS) ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
 FEDERAL TRADE COMMISSION ACT

Docket 6082. Complaint, Feb. 19, 1953—Decision, July 8, 1953

Where a corporation and its four officers, engaged in the competitive interstate sale and distribution of sewing machines with heads imported from Japan, on the back of the vertical arms of which the words "Made in Occupied Japan" or "Japan" were covered by the motor, and on the front of some of which arms a medallion, readily removable, displayed the words in such small and indistinct fashion as not to constitute adequate notice that the heads were imported—

- (a) Failed to disclose adequately on their said sewing machines that the heads were made in Japan;
- (b) Falsely represented that their product was manufactured by or connected in some way with well and favorably known American firms through the featured use of such trade names or brands as "Illinois" or "Illinois De-Luxe" or other prominent domestic names;
- (c) Represented through the use of the word "Distributors" in their corporate and trade names that they were distributors of said sewing machines, when in fact they were retailers;
- (d) Represented that they were making a bona fide offer to sell New Home, Singer, Eldredge, and Domestic rebuilt console and portable electric sewing machines for the sums of \$49.50 and \$24.95, through such statements, among others, in their advertising as "HUGE SAVINGS DEMONSTRATOR SALE Choose from New Home, Singer, Eldredge, Domestic * * *", "Illinois Rebuilt Singer Head * * * Regular \$99.50 NOW \$49.50", and "Illinois Rebuilt White Head * * * Regular \$49.50 NOW \$23.95";

The facts being said offers were not genuine or bona fide; salesmen who after obtaining leads, called upon persons interested, made no effort to sell the machines advertised, but disparaged them and attempted to sell different and more expensive machines, particularly those with heads made in Japan:

Held, That such acts and practices were all to the prejudice and injury of the public and respondents' competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart and *Mr. Michael J. Vitale* for the Commission.

Froelich, Grossman, Teton & Tabin, of Chicago, Ill., for respondents.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1953, 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 purposes 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, filed March 10, 1953, hereby admit:

(1) 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 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:

PARAGRAPH 1. Respondent Rodney Distributors, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 5671 Milwaukee Avenue, Chicago, Illinois. Said corporation does business under the name of Illinois Sewing Machine Distributors. Respondents Seymour Ratner, Irwin Ratner, Harold Ratner and Joseph Wandel are President, Vice-Presidents, and Secretary-Treas-

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 July 8, 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.

urer, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale of sewing machines, the heads of which are imported from Japan, to the purchasing public. In the course and conduct of their business respondents cause and have caused their said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States in the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machines are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the machine underneath the motor. The aforesaid words are, however, covered by the motor so that they are not visible. In some instances, said sewing machines, when sold by respondents, are marked with a medallion placed on the front of the sewing machine upon which the words "Japan" or "Made in 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. Furthermore, said medallion can be readily removed and when the medallion is so removed no visible mark of origin appears on the machine.

Respondents place no other mark on the sewing machines showing foreign origin, or otherwise inform the public that the sewing machines are of foreign origin, 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 are not marked or not adequately marked showing that they or parts thereof 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 and has been among the members of the purchasing public a substantial number who have a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries including sewing machines.

PAR. 5. Respondents use the words "Illinois," "Illinois De Luxe" and other prominent domestic names as trade or brand names for their sewing machines, which words are imprinted or embossed on the front horizontal arm of the head in large, conspicuous letters, and use said trade or brand names in their advertising matter. The word "Illinois" and other prominent domestic names are the names or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States.

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States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 6. By using a trade name or brand name such as "Illinois" or "Illinois De Luxe" and other prominent domestic names, respondents have represented and now 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 fact.

PAR. 7. There is and has been 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 word "Illinois" and other prominent domestic names. The use of said trade or brand names by respondents on their sewing machines enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 8. Respondents, by and through the use of the word "Distributors" in their corporate name and in their trade name represent and have represented directly or by implication, that they are distributors of said sewing machines. In truth and in fact, respondents are not distributors but are retailers of this product. A substantial number of the purchasing public prefer to deal with distributors of the products rather than retailers, believing that in doing so certain advantages accrue, such as cheaper price.

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

**HUGE SAVINGS
DEMONSTRATOR SALE!**

Choose from
New Home Singer
Eldredge Domestic
(Hundreds of other Electrified
Rebuilt and Re-Conditioned
Sewing Machines)

Illinois Rebuilt Singer Head Electrified
and installed in our NEW CONSOLE
CABINETS

Regular \$99.50
NOW 49.50

Picturization of console electric
sewing machine

5-year Guarantee on parts
Full protection on every part for five

Now . . . Illinois makes this OUT-
STANDING Offer! Sewing Machine
Demonstration . . . like-new perfect
sewing machines used ONLY by Illi-
nois experts for demonstration pur-
poses . . . Offered to you as SMASH
SAVINGS! Actual "show-off" ma-
chines . . . With all the attachments
. . . all the easy sew features priced
at rock bottom. Don't miss this un-
usual opportunity to own a wonderful
sewing machine for way less!

Illinois Rebuilt White Head Electrified
and Installed in our NEW PORTABLE
CASES. Regular \$49.50 NOW \$24.95.

Picturization of portable elec-
tric sewing machine

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ILLINOIS SEWING MACHINE DISTRIBUTORS

(Division of Rodney Distributors, Inc.)

Northside Factory Showroom
5671 Milwaukee Avenue

Southside Showroom
11066 So. Western Avenue

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 New Home, Singer, Eldredge, and Domestic rebuilt console and portable electric sewing machines for the sums of \$49.50 and \$24.95, respectively.

The aforesaid representations were misleading and deceptive. In truth and in fact the offer to sell rebuilt New Home, Singer, Eldredge and Domestic Sewing Machines for \$49.50 and \$24.95 were not genuine or bona fide offers. After obtaining leads, respondents' salesmen call upon such persons at their homes or wait upon them at respondents' place of business. At such times and places some of respondents' salesmen have made no effort to sell the sewing machines advertised, but have disparaged the machines advertised and then attempted to sell different and more expensive sewing machines, particularly machines of which heads made in Japan are a part.

PAR 10. Respondents, in the course and conduct of their business, were and are in substantial competition in commerce with 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. 11. The failure of respondents to adequately disclose on the sewing machines that they are made in Japan and also the use of the trade or brand name "Illinois," 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 because of this erroneous and mistaken belief.

Further, the use by respondents of the other 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.

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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, 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 respondent Rodney Distributors, Inc., a corporation, doing business under its own or any other name, and its officers, and respondents Seymour Ratner, Irwin Ratner, Harold Ratner and Joseph Wandel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing 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 machines, or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof, in such a manner that it cannot readily be hidden or obliterated.

2. Using the word "Illinois," or any simulation thereof, as a brand or trade name, or as a part thereof, to designate, describe or refer to their sewing machines, or representing through the use of any other word or words, or in any other manner, that said sewing machines are manufactured by anyone other than the actual manufacturer.

3. Using the word "Distributor," or any simulation thereof, as a part of a corporate or trade name; or representing in any other manner that said respondents are distributors of the sewing machines sold by them.

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.

It is further ordered, That the respondents Rodney Distributors, Inc., a corporation, doing business under the name of Illinois Sewing Machine Distributors; and Seymour Ratner, Irwin Ratner, Harold Ratner, and Joseph Wandel, individually and as officers of said

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corporation, 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.

[s] SEYMOUR RATNER, *Pres.*,
Rodney Distributors, Inc., a
corporation, doing business
under the name of Illinois
Sewing Machine Distribu-
tors.

[s] SEYMOUR RATNER,
Seymour Ratner, individually
and as officer of Rodney
Distributors, Inc., a corpo-
ration.

[s] IRWIN RATNER,
Irwin Ratner, individually and
as officer of Rodney Distrib-
utors, Inc., a corporation.

[s] HAROLD RATNER,
Harold Ratner, individually
and as officer of Rodney Dis-
tributors, Inc., a corporation.

[s] JOSEPH WANDEL,
Joseph Wandel, individually
and as officer of Rodney
Distributors, Inc., a corpo-
ration.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 8th day of July, 1953.

IN THE MATTER OF
MAURICE BLATT DOING BUSINESS AS WASHINGTON
WEEKLY GAZETTE, BALTIMORE WEEKLY GAZETTE,
ESSEX COUNTY WEEKLY GAZETTE, ETC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5777. Complaint, May 10, 1950—Decision, July 9, 1953

Where an individual engaged in the preparation and distribution over a period of years and in various communities of publications known in the newspaper field as "puff sheets," which were designated usually as the "Weekly Gazette" and generally preceded by the name of the particular community, displayed a local date line and the words, "5 Cents Per Copy," and, in some instances, the number of readers claimed; carried on the first page a few brief local news items and usually one or more pictures, and on the second page a box containing the local address and telephone number and the name of its editor, publisher, and manager; and, for the rest, consisted mainly of paid write-ups of local businessmen in the particular community, which publicized individuals and their businesses and described their products or services in laudatory terms, and which, not designated as advertisements, were made to simulate news stories, and constituted said individual's main source of income—

- (a) Represented, in the course of his business, and in the solicitation of the sale of write-ups or sketches by his agents, whom he supplied with leads and a standard sales talk, that the papers were genuine weekly newspapers or gazettes;

When in fact the papers consisted essentially of said paid write-ups which were merely advertisements designed to simulate news; they had no paid circulation; and, while a limited number of copies was printed and given away or otherwise disposed of in random fashion, they had no regular readers, and could not, under any fair test, be considered bona fide newspapers;

- (b) Represented falsely, as aforesaid, that each of said papers was a local publication with a local publisher, editor, and manager, and a bona fide local office address and telephone number where contacts could be made;

The facts being said individual neither owned nor operated any printing presses in any of the communities concerned, except Philadelphia during the earlier days of his operations; most of the printing, later, was performed for him by an Italian-language newspaper there; for long periods he maintained no bona fide offices in any of the communities and his address and telephone number were that of a telephone answering service during the relatively short periods; when he did lease office space and had his own telephone service in some communities, such offices consisted only of telephone solicitors; many of such solicitors were hired in Philadelphia and worked in a number of different communities; customers who tried to reach the local organization were unable to do so; the so-called manager's duties were concerned only with the solicitation; and all bookkeeping and accounting work was carried on from Philadelphia;

- (c) Represented falsely, as aforesaid, that each of said publications was widely read and circulated in the community where the prospective customer resided and did business, and had a large and definite paid circulation—represented, in some communities, as being at least 17,000—through such statements as “17,000 readers” on the first page, along with “5 Cents Per Copy,” and through statements by its solicitors;

The facts being the papers had no paid circulation and were not sold on newsstands; the number of those in any given community who had heard of or read his papers was negligible; said papers, after he began employing independent distributing agencies, were distributed within a radius of one or two city blocks until they gave out, usually in a different area each week, and apparently without plan; the maximum number distributed in most communities was apparently 2,000, excepting New York, Chicago, and Philadelphia in which 5,000 copies were distributed; and purchasers of write-ups found, almost without exception, not a single customer who had seen the paper or write-ups; and

- (d) Represented, as aforesaid, that the paid write-ups or sketches about individual businessmen and business firms would be published in a “Personalities Column” in each paper;

The facts being said individual did not publish or print any such column and said write-ups were in the nature of advertisements regarding business firms or individuals which appeared throughout the paper and were set up so as to simulate ordinary news items:

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

Before *Mr. Abner E. Lipscomb* and *Mr. John Lewis*, hearing examiners.

Mr. William L. Taggart for the Commission.

Brodsky, Brodsky & Brodsky, of Philadelphia, Pa., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's “Decision of the Commission and Order to File Report of Compliance”, dated July 9, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 10, 1950, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the

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allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and said 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 examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by the attorney in support of the complaint (no proposed findings or conclusions having been filed by counsel for respondent), and oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Maurice Blatt is an individual doing business under the name of Washington Weekly Gazette, Baltimore Weekly Gazette, Weekly Gazette, Weekly Post, Weekly Tribune, Weekly Times, Blatt Features, and under other trade or assumed names, as hereinafter set forth. At all times hereinafter mentioned his principal office and place of business was located at 179 West Berks Street, Philadelphia, Pennsylvania. During the period from 1947 until at least 1952 respondent engaged in the preparation and distribution of a number of weekly publications or papers containing paid sketches or write-ups of businessmen and business firms. In the course and conduct of his said business, during the time aforesaid, respondent caused drafts and proof sheets of such sketches and write-ups, and written notes and other intelligence in connection therewith, to be transported in commerce to, from, and between his principal office and place of business in the State of Pennsylvania and other States of the United States and the District of Columbia. After printing or causing to be printed, in Philadelphia, the said publications containing the aforesaid sketches and write-ups, respondent transported or caused the said publications to be transported in commerce, and delivered same to the individuals and businesses purchasing the sketches and write-ups therein contained, and otherwise distributed same to the public in various States of the United States, other than the State of Pennsylvania, and in the District of Columbia.

PAR. 2. The main source of respondent's income from his said business has been derived from the sale by him of sketches or write-ups in his weekly publications concerning businessmen or business firms in the communities in which he has operated. Said sketches or write-ups publicize the individuals associated with a given business, describe its

products or services in laudatory terms, and in general seek to induce the public to patronize the establishment. The write-ups are not designated as "advertisements" but are made to simulate news stories. Respondent's method of operation in the sale of such sketches or write-ups is substantially as follows:

Respondent employs a number of sales agents, called solicitors, whose primary duty is to communicate by telephone with prospective customers in an effort to induce them to purchase write-ups in one of respondent's papers or publications. Respondent supplies these agents with leads as to particular prospects to be called, with drafts of stories adapted to a number of different types of businesses, and with a standard form of sales talk for use in soliciting customers, supplemented by a list of "Comebacks" to be used if prospects ask questions not covered by the standard sales talk. The solicitor telephones a prospect and advises him that he is calling on behalf of a named newspaper (the name given depending on the name used by respondent in the particular community). The solicitor advises the prospective customer that the paper is running a story about his business in the ensuing edition and that they wish to check the story with him before publishing it to make sure it is correct. After the story is read over the telephone, the prospect is advised that it will appear in the "Personalities Column" of the paper and he is asked for additional information regarding his business "to make the story more complete." After making such additions or changes as may be suggested by the prospect, he is then advised that the full story will appear in the "Personalities Column" and that he will receive a few copies of the paper for his personal use. At this point the solicitor mentions for the first time that the people whose stories are included in the paper "are paying some amount to help defray the expense of their story." The amount is then mentioned to the prospect, it varying from \$10 to \$25. If the prospect agrees to pay the stipulated amount, the draft of the story, including additional notes and information obtained from interviewing him, is mailed to respondent's main office in Philadelphia. Respondent employs so-called rewrite men in Philadelphia who assemble the material in the form of a narrative and it is then printed in the publication or paper intended for distribution in the particular community where the customer resides or does business. The papers are then shipped from Philadelphia and a few copies are delivered to the prospect by an employee of respondent designated as a "collector," who thereupon collects the amount previously agreed upon.

Respondent has conducted his operations in a number of different communities, mainly in the eastern part of the United States, including, among others, Washington, D. C.; Baltimore, Maryland; Wilmington,

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Delaware; New York, New York; Chicago, Illinois; Newark, Patterson, New Brunswick, and Camden, New Jersey; Philadelphia, York, Lancaster, Morristown, Allentown and Reading, Pennsylvania; and Dayton, Toledo and Cincinnati, Ohio. The period of operation in the various communities has varied from as little as a few weeks in some to as much as four years in others such as Washington, D. C., and Baltimore, Maryland. The average period of operation has been three to four months and respondent has ceased doing business in most of these communities because of lack of business, or because of the opposition of the local Better Business Bureau, or both. Most of the papers were known as the "Weekly Gazette," with the name of the particular community usually appearing immediately above this title. In Cincinnati, where respondent operated for a few months in 1952, he used the name "Weekly Tribune." In Chicago the paper was called the "Weekly Post." In York, Pennsylvania, the paper was called the "Weekly Times."

In most of the communities where he operated, with the exception of Philadelphia, the only situs which respondent had was the address and telephone number of a telephone answering service or the residence address or telephone number of one of his solicitors. However, beginning in the early part of 1950 (subsequent to the investigation of his business by the Commission and shortly prior to the issuance of the complaint herein) respondent leased office space in some of the communities where he was still operating and also secured his own telephone and telephone listing in these communities. Outside of Philadelphia, respondent at no time owned or operated any printing presses. At his principal place of business in Philadelphia respondent operated a print shop under the name of Lor-Jeff Printing Company, where the actual printing of the various publications and papers was performed during the earlier days of his operations. Later on, beginning in 1950, respondent began to have most of the printing of his papers performed for him by an Italian-language newspaper in Philadelphia.

All of the papers prepared and distributed by respondent were substantially similar in makeup and appearance. Across the top of the front page of each paper appeared the words, in heavy type: "SUPPORT YOUR COMMUNITY." Beneath this heading in still larger and bolder type appeared the name of the paper, generally, "Weekly Gazette." The name of the particular community generally appeared above the name of the paper, although in some instances, it appeared only on the dateline. Below the name of the paper there appeared on the first page of each paper a local dateline with the name of the community, the date, the words "5 Cents per Copy" and, in some instances, the number of readers claimed by the paper. On the second page of

each paper was a box setting forth the local address and telephone number of the paper and the name of its editor, publisher and manager. Outside of the heading, the balance of the first page of each paper consisted of a few brief, local news items and usually one or more pictures. The pictures were usually identical in each edition of the paper for a given date but the local news items differed in each community. The balance of each paper consisted of paid write-ups of businessmen in the particular community, supplemented by a number of substantially identical features such as cartoons, puzzles, a few syndicated columns and pictures of radio and movie stars. While the paid sketches or write-ups differed in the different editions of the paper, the other features which filled out the paper were substantially identical in all papers of a given date.

After being printed, the papers were shipped by automobile, railroad or air freight to the respective communities where distribution was to be effected. As previously mentioned, a few copies of each paper were delivered by one of respondent's collectors in the community to each of the persons who had agreed to pay for a write-up. The balance of the papers were distributed at random in various parts of the community. For several years the papers were distributed by boys hired by respondent, no records being kept to show the places of distribution and the number delivered. Beginning in 1950 the papers were distributed by independent contractors who furnished invoices showing the number of copies distributed and the places thereof. During this latter period, according to the record, the number of copies printed and distributed has varied from 2,000 to 5,000 papers, depending on the community. The papers have usually been distributed in a different area in the community each week being left in homes, stores, or office buildings.

PAR. 3. In the course and conduct of his business and in soliciting the sale of write-ups and sketches in his publications, respondent has made the following representations:

1. Respondent has represented that the papers and publications prepared and distributed by him in the various communities in which he has operated are genuine weekly newspapers or gazettes.

2. Respondent has represented that each of said papers is a local publication, having a local publisher, editor and manager, and a bona fide local office, office address and telephone number, where contacts can be made if desired.

3. Respondent has represented that each of said papers and publications is widely read and circulated in the community where the prospective customer resides or does business and has a large and definite paid circulation, which, in some communities, is represented as

being at least 17,000. While respondent denies ever having represented that any of his publications has a paid circulation of 17,000, he admits having represented that some of the papers have 17,000 "readers." This figure was arrived at by multiplying the number of papers allegedly distributed, 3,500, by the number 5. Accordingly to respondent, it is customary in the newspaper industry for a paper not having a paid circulation to claim that it has a certain number of readers, by multiplying the actual number of copies distributed by the average number of persons who it may reasonably be expected will see each copy distributed. The undersigned finds it unnecessary to determine where there is any such custom or practice in the newspaper industry. If there is such a practice there is no evidence to establish that it is well known and accepted by the reading public. Respondent's papers all contain thereon, on the top of the first page, the legend: "5 Cents Per Copy." In some communities there also appears on the dateline the statement: "17,000 Readers." In the opinion of the undersigned a substantial number of persons, upon observing the statement that the paper is for sale at 5 cent per copy, together with the further statement that the paper claims to have 17,000 readers, would reasonably understand and infer therefrom that the paper claims to have a paid circulation of 17,000. In any event, irrespective of any statement made on the papers themselves, a number of respondent's telephone solicitors have represented in conversations with prospective customers that the publications have a paid circulation of as much or more than 17,000 and have conveyed the impression to prospective customers that the papers are widely circulated and distributed in their respective communities and in various sections of said communities.

4. Respondent has represented that the paid write-ups or sketches about individual businessmen and business firms will be published in a column in each paper dominated "Personalities Column."

PAR. 4. The statements and representations, hereinabove set forth, found to have been made by respondent are false, misleading and deceptive in the following respects, among others:

1. Respondent's papers or publications are not genuine weekly newspapers or gazettes. The amount of space devoted to genuine news in said papers is negligible. Outside of a few brief local news items, and the assorted fill of cartoons, crossword puzzles, pictures and other "boiler plate" (which are substantially identical in all papers of the same date), the papers consist essentially of paid write-ups and sketches which are not news articles but are merely advertisements designed to simulate news. Not only do the papers not have any paid circulation, but they do not even have a regular group of readers as do some small local newspapers or shoppers' news which are distributed on

a non-pay basis. Most papers which carry write-ups similar to those carried in respondent's papers designate them as "Advertisements." All newspapers having a paid circulation do this as a regular practice. While some small local papers having no paid circulation may sometimes carry such articles without designating them as advertisements, they contain a reasonable amount of other information which may be properly called news and have a regular reading public. Respondent's papers and publications are what is known in the newspaper field as "puff sheets." Such papers seek to take advantage of the public's natural desire for publicity by inducing individuals and businesses to pay for laudatory articles about them, and contain little else of news value. A limited number of copies is printed up and given away or otherwise disposed of in random fashion. While it may sometimes be difficult, as one of respondent's witnesses testified, to draw the line between a genuine newspaper and a "puff sheet" (the test, according to this witness, being the proportion of genuine new articles as compared to paid publicity), respondent's papers, under any fair test, cannot be considered bona fide newspapers.

2. Respondent's papers are not local papers; they are not published in the community where the prospective customer resides or does business; they do not have a local publisher or editor; and they do not maintain a bona fide local office of the type ordinarily conducted by local papers where contacts can be made by the public. Admittedly, respondent does not own or operate any printing presses for the printing of his papers in any of the communities in which he operates, with the exception of Philadelphia. While it may be true, as contended by respondent, that a paper may be said to be published in a particular community even though it is printed elsewhere, nevertheless the record fails to disclose the presence in any of the communities where respondent has operated of any of the other indicia ordinarily associated with a local publication (which, according to one of respondent's own witnesses, include the gathering and assimilating of news, the composition of the paper, and the bookkeeping and clerical work incidental thereto). The papers have no editors and no reporters in any of these communities, other than Philadelphia. For long periods of time respondent maintained no bona fide offices in these communities, such as that usually operated by a local publication, his address and telephone number being that of a telephone answering service. Many of his solicitors were not local people but were hired in Philadelphia and worked in a number of different communities. During this period customers or prospective customers who tried to reach respondent's local organization were unable to do so. Even during the relatively short periods when respondent leased

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office space and had his own telephone service in some of these communities such offices were in no sense similar to those of local publications. They consisted of a number of desks, at each of which was stationed a telephone solicitor whose only duty was to make telephone calls to prospective customers in order to induce them to purchase write-ups. These solicitors performed none of the duties ordinarily associated with newspaper reporting, newspaper work, or publishing. They were all supplied by respondent with leads of the prospects to be called, with standard forms of sketches to read to the prospects, with a stock speech to make and with a stock list of answers to give in case of "comebacks." When they obtained the necessary information they did not formulate it into a story but simply forwarded their notes to Philadelphia where the actual writing of the story was performed by so-called re-write men. Although each office had a so-called manager, his or her duties did not involve anything resembling that of a manager of a local paper or publication but consisted of part-time service as a telephone solicitor, the parceling out to the other telephone solicitors of the drafts of sketches and leads received from respondent, and arranging with the boys or distributing agency for the distribution of the paper. None of the office work ordinarily associated with a local paper or publication was performed in the respective communities. All bookkeeping and accounting work was performed in Philadelphia; payroll checks were made up and mailed from Philadelphia; all tax returns, workman compensation reports and other reports required by State and Federal Government agencies were prepared and mailed from Philadelphia. Based on the foregoing it seems clear that none of the indicia of publication of a local paper was present in the local communities where respondent operated.

3. The impression which respondent has sought to create that his papers are widely read and circulated in the communities where he has operated and that they have a large and definite paid circulation, which is as much as 17,000 in some communities, is false and without foundation in fact. Admittedly, the papers have no paid circulation, are not sold on newsstands and other places where newspapers and periodicals are ordinarily distributed, and have no regular list of subscribers or readers. The number of persons in any given community which has heard of or read any of respondent's papers is negligible. His method of distribution has been such that it would be more by accident than design that the same group of persons would see the paper more than once. For several years, while respondent was using boys to distribute the papers, there are no records to substantiate what, if any, distribution was made and the places thereof. Even after respondent began using independent distributing agencies in

1950 the deliveries were relatively small and were accomplished in a rather desultory fashion. Each week a given number of papers were turned over to the delivery agency for distribution. They were distributed within a radius of about one or two city blocks until the paper gave out, and were usually distributed in a different area each week. There appears to have been no particular plan or design in distributing the papers other than to dispose of a given number. While respondent's local manager sometimes gave the delivery agency instructions as to the place of delivery it was frequently left to the agency's discretion where it would distribute the papers and the latter would follow the course of least resistance by leaving the papers in a single downtown office building, where more rapid distribution could be accomplished, rather than in a residential area.

To the extent that the number of papers delivered can be substantiated by records, the maximum number of papers distributed in most communities appears to have been 2,000 except for New York, Chicago, and Philadelphia where 5,000 copies were distributed. It is noteworthy that in Washington, D. C., and Baltimore where respondent claimed to have made a weekly distribution of 3,500 (upon which he based his claim of 17,000 readers) the records which he produced, covering the period that he used independent distributing agencies in these communities, show a distribution of only 2,000 copies.

Although persons purchasing write-ups were frequently assured by respondent's solicitors that the paper was widely distributed in a particular part of the community (e. g., Northeast Washington or Southeast Washington) where it would be read by their customers or prospective customers, there was actually no correlation between the location of the businesses of the sketches and the places of distribution. In fact, each issue of the paper included write-ups of persons located in widely scattered parts of the community so that by delivering 2,000 copies of the paper in a radius of one or two blocks in any given part of the community it would be impossible that distribution could be made among any significant number of customers or prospective customers of the sketches. Persons who were induced to purchase write-ups based on such representations as to distribution among their customers found upon inquiry that, almost without exception, not a single customer had seen the paper or their write-up.

4. The write-ups or sketches which respondent represented would be printed in the "Personalities Column" of the paper do not appear in any such column. In fact, respondent does not publish or print any column so designated. A "Personalities Column" would ordinarily be understood to be a separate column such as that which appears in many

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newspapers under the by-line of some columnist, and containing comments of interest about particular individuals in the community. The write-ups or sketches which respondent prints are not similar to those appearing in such columns but are in the nature of advertisements regarding business firms or individuals. They do not appear in any special designated "Personalities Column" but appear throughout the paper and are set up so as to simulate ordinary news items.

PAR. 5. The complaint also alleges that respondent has represented that his papers or publications are not run for profit and that full payment to cover the cost of the expense of publishing the sketch is not required. While there is some evidence suggesting that such representations may have been made, the record as a whole is lacking in substantial evidence to sustain this allegation of the complaint.

The complaint further charges that respondent represented that customers would receive 25 extra copies of the paper containing their sketch and that this promise was not fulfilled. The record is lacking in substantial evidence that customers were promised 25 copies of the paper or any other customary number. The collector ordinarily delivered a few copies of the paper to each customer and where the customer asked for or had been promised any additional number of copies he usually received this number from the collector.

PAR. 6. The acts, practices and methods of respondent in making and using the false and misleading statements, representations and implications, referred to in Paragraphs Three and Four above, have the capacity and tendency to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations and implications are true, and by reason of such erroneous and mistaken belief, so engendered, to cause a substantial portion of the purchasing public to purchase articles, sketches, write-ups or advertising space in said papers or publications for a valuable consideration.

CONCLUSION

The aforesaid acts and practices of the respondent, as hereinabove found, are all to the prejudice 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 respondent Maurice Blatt, individually or trading as a Washington Weekly Gazette, Baltimore Weekly Gazette, Essex County Weekly Gazette, Passaic County Weekly Gazette, Union County Weekly Gazette, Weekly Gazette, Weekly Post, Weekly Trib-

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une, Weekly Times, Blatt Features or trading under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any paper or publication of the type heretofore published by him or any other paper or publication of substantially similar makeup and composition and operated in a substantially similar manner, do forthwith cease and desist from representing:

1. That any of said papers or publications is a newspaper or gazette.
2. That any of said papers or publications is a local publication; that it is published in the community where the prospective advertiser resides or does business; or that respondent maintains a bona fide publication office at any place other than Philadelphia.
3. That any of said papers or publications is widely read and circulated, or has a paid circulation, or that it has a circulation of 17,000 or any other designated number unless said number represents the actual number of copies which are distributed.
4. That paid write-ups or sketches, which are actually advertisements of businesses and individuals, will be published in any column denominated a "Personalities Column."

It is further ordered, That the allegations of the complaint referred to in Paragraph Five above be, and the same hereby are dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent Maurice Blatt shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of July 9, 1953].

IN THE MATTER OF
CHAMPION SPARK PLUG CO.

FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (a) AND 2 (d) AND SEC. 3 OF THE CLAYTON ACT, AS AMENDED, AND OF THE FEDERAL TRADE COMMISSION ACT

Docket 3977. Complaint, June 27, 1947¹—Decision, July 10, 1953

Where a corporation which was one of ten concerns engaged in the manufacture of spark plugs and, with General Motors and the Electric Auto-Lite Co., made more than 80 percent of all the spark plugs produced and sold in the United States; sold its said product (1) to vehicle or engine manufacturers for use by them as original equipment and sold the same also (2) for resale for replacement to automobile manufacturers, wholesalers of automobile parts and accessories, oil companies and others, competitively engaged, along with many of their customers, in the resale of spark plugs at wholesale and retail;

In selling its spark plugs of like grade and quality for resale for replacement since June 19, 1936, at prices which varied substantially as between (1) purchasers buying directly from it, including its distributors, Atlas Supply Co., Socony-Vacuum Oil Co., and certain automobile and truck manufacturers (and prior to 1941 "direct jobbers"); (2) purchasers buying indirectly from it; and (3) purchasers buying directly and purchasers buying indirectly from it—

- (a) Discriminated in price between distributors and certain automobile manufacturers in that in 1947, as illustrative, it sold its said products to said distributors at net prices of 26.1 cents and 24.65 cents in certain types of accounts; to four automobile manufacturers at 24 cents; and to Ford, at a cost to Ford, through latter's payment of the 5 percent excise tax, of about 22 cents;

With results, as a consequence of Ford's advertising and promotional activities, induced in part by the low price paid by Ford for such plugs, that Ford dealers preferred to purchase their requirements of such plugs direct from Ford, and certain of respondent's distributors, including those in competition with Ford for the business of the latter's dealers, lost the accounts;

Where said corporation, in selling its said spark plugs to (1) Atlas Supply Co., which was owned by a subsidiary of Standard Oil Company of New Jersey and the Standard Oil Companies of Ohio, Indiana, Kentucky, and California, purchased respondent's plugs for resale to said various Standard Oil companies, and conducted a complete merchandising program for the resale of automobile parts and accessories, including said plugs, profits of which were divided among said companies on the basis of the merchandise purchases and to (2) Socony-Vacuum Oil Co., which purchased automobile products, including spark plugs, not only for resale through its own outlets but also for its affiliates, and both of which carried on extensive advertising, training and other activities to promote the sale of respondent's spark plugs through independently operated service stations selling their respective products; and to (3) various other distributors—

¹ Amended.