

Syllabus

IN THE MATTER OF

BEGA SEWING MACHINE, INC. ET AL.

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

Docket 5893. Complaint, June 27, 1951—Decision, Sept. 18, 1953

Where a corporation and three officers thereof, engaged in the competitive interstate sale and distribution of completed sewing machines, and of imported sewing machine heads, on the back of the vertical arm of which the word "Japan" became covered by the attachment of a motor thereto, and on the front of some of which a bronze-colored metal medallion displayed the words "Made in Japan," "Made in Occupied Japan", or "Japan" in such small and indistinct fashion as not to be legible to those who bought the product or to the public—

- (a) Failed adequately to disclose on the said sewing machine heads imported by them that they were manufactured in Japan;

With the result of placing in the hands of dealers in their said products a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin thereof, and with tendency and capacity to lead members of the purchasing public into the erroneous belief that said machines were of domestic origin and thereby induce their purchase of such products; whereby trade was unfairly diverted to them from their competitors, including manufacturers and sellers of the domestic product and sellers also of the imported machines; and

- (b) Represented through the use of the phrase "Warranty Certified" in advertising brochures sent to dealers for use by them as a resale sales aid, and so implied, that they were guaranteeing their said sewing machines without limitation;

The facts being they did not guarantee the same to the purchasing public, but furnished dealers with an unsigned "20-Year Guarantee" certificate with each machine sold, for the use and signature of the dealer, if he so desired; terms of the guarantee certificate limited it to one year for the motor and accessories; and the certificate, as to the rest of the machine, limited the guarantee to the replacement of defective parts;

With tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that they were absolutely guaranteeing their said sewing machines and thereby induce members of the public to purchase the same:

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. Everett F. Haycraft*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.
Goldberg & Kelter, of New York City, for respondents.

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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 unfair methods of competition and 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 respondents' answer thereto, hearings were held, at which testimony and other evidence in support of the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, no testimony being offered by respondents in opposition to the allegations of the complaint, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter on May 26, 1952, the hearing examiner filed his initial decision which was duly served on the parties.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed an appeal from said initial decision. Thereafter this proceeding regularly came on for consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal (oral argument not having been requested) and the Commission issued its order granting said appeal; and the Commission, 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 and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bega Sewing Machine Corporation (erroneously named in the complaint as Bega Sewing Machine, Inc.) 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 26 West 22d Street, New York, New York. Respondents Tola Bega, Sarah Saul, and Rose Saltio are President, Secretary and 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 said respondents is the same as that of corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and of completed sewing machines of which such im-

ported heads are a part, to distributors and also 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 now substantial.

PAR. 3. When the sewing machine heads were first imported from Japan by respondents, the words "Made in Japan" usually were printed or stenciled on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine respondents attached a motor to the head on the back of the vertical arm so that the aforesaid words "Made in Japan" were covered by the motor and were not visible. In some instances said sewing machine heads, when received by respondents, were also marked with a bronze-colored metal medallion attached to the front of the vertical arm upon which the words "Made in Japan," "Made in Occupied Japan" or "Japan" appeared. These words were, however, so small and indistinct that they were not legible to those who bought them from the respondents or to the public.

PAR. 4. When respondents advertised said sewing machines of which sewing machine heads imported from Japan are a part, in brochures or catalogs that were issued to the retail dealer trade, they displayed a picture of the sewing machine head equipped with accessories including the motor featuring the name "Bega" with the following printed matter in connection therewith:

(Picture of Bega Sewing Machine Head)

NEW "BEGA" SEWING MACHINE

(Picture of mechanism of sewing machine)

This style machine is better known as "The World's Finest"

Also available with name

"SEWMASTER"

The desirable qualities of this machine are:

- Hinged Presser Foot
- Interchangeable with 15-83 parts
- Lock Stitch
- Sews over pins
- Forward and Reverse
- Self Releasing Bobbin Winder
- Warranty Certificate

The picture of the sewing machine had a medallion on the large vertical arm but the insignia thereon is not legible. In billing said

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sewing machines under the trade name "Bega" and "Sewmaster" respondents, prior to January 1951, did not indicate on invoices that any part thereof was manufactured in Japan. Beginning on or about November 1950 some of the invoices contained the abbreviation "Imp." which, it was asserted by respondents, meant "imported," but was not so understood by a dealer who testified. Beginning in August 1951 respondents in their invoices to dealers described said sewing machines as "Made in Japan." The retail dealers, in turn, in their invoices to the public, described said sewing machines as "Sewmaster" without indicating their origin.

PAR. 5. When sewing machines are exhibited and offered for sale to the purchasing public and such products are not adequately marked to show that they are manufactured in Japan, or if marked and the markings are covered or otherwise concealed, the purchasing public understands and believes such products to be wholly or substantially of domestic origin. There are among the members of the purchasing public a substantial number who have a decided preference for sewing machines which are manufactured in the United States over sewing machines originating in whole or in substantial part in Japan, where other considerations such as style and quality are equal.

PAR. 6. Respondents by placing in the hands of dealers their said sewing machine heads and completed sewing machines, as hereinabove described, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said sewing machines.

PAR. 7. Respondents in the course and conduct of their said business are in substantial competition in commerce with the manufacturers and sellers of domestic sewing machines and also sellers of imported sewing machines.

PAR. 8. The failure of respondents adequately to disclose on the sewing machine heads, imported by them as aforesaid, that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that the said sewing machines are of domestic origin, and to induce members of the purchasing public to purchase said sewing machines because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their said competitors and substantial injury has been done to competition in commerce.

PAR. 9. By the use of the phrase "Warranty Certificate" in their advertisement set out in Paragraph 4 of these findings, respondents represented that they were guaranteeing their "Bega" and "Sewmaster" sewing machines without limitation. Respondents' brochures

containing said advertisements, although sent by respondents only to dealers, were designed by respondents and were used by their dealers as a retail sales aid. Said brochures were shown to prospective purchasers by retailers of respondents' products to assist them in selling said products.

PAR. 10. In fact, respondents did not guarantee said sewing machines to the purchasing public. Respondents furnished the dealers an unsigned "20 Year Guarantee" certificate with each sewing machine sold. These certificates were never signed by respondents but were intended for the use of the dealer, if he so desired, and were to be signed by him. Further, the terms of the guarantee certificate limited it to one year for the motor and accessories. As to the rest of the sewing machine, the certificate limited the guarantee to the replacement of defective parts.

PAR. 11. The use by respondents of the misleading and deceptive representations as found in Paragraphs 9 and 10 hereof has the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that the respondents are absolutely guaranteeing their said sewing machines and to induce members of the public to purchase said sewing machines because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove set out, 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. The acts and practices of respondents hereinabove set out in Paragraphs 3 through 8 also constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Bega Sewing Machine Corporation, a corporation, and its officers, and Tola Bega, Sarah Saul and Rose Saltio, as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are

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a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country or origin thereof.

2. Representing, directly or by implication, that their sewing machine heads or sewing machines are warranted, unless the nature and extent of the warranty and the manner in which the seller will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That respondents Bega Sewing Machine Corporation, Tola Bega, Sarah Saul, and Rose Saltio 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 the order to cease and desist.

Interlocutory Order

IN THE MATTER OF
DOUBLEDAY AND COMPANY, INC.*Docket 5897. Order and opinions, Sept. 18, 1953*

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.
Satterlee, Warfield & Stephens, of New York City, for respondent.

ORDER AFFIRMING IN PART AND SETTING ASIDE IN PART THE HEARING
EXAMINER'S RULINGS ON RESPONDENT'S MOTIONS TO DISMISS, AND
REMANDING PROCEEDING TO HEARING EXAMINER

This matter having come on to be heard by the Federal Trade Commission upon the appeal of counsel supporting the complaint from the hearing examiner's ruling on respondent's motion to dismiss Count I of the complaint herein to the extent that it grants said motion and from his initial decision dismissing Count III, and upon briefs in support of and in opposition to this appeal and oral argument of counsel; and

The Commission, upon consideration of the entire record herein, having decided, for the reasons stated in the written opinion of Chairman Howrey which is being issued simultaneously herewith, that the hearing examiner correctly ruled that respondent's practice of granting exclusive book club publishing rights is not in violation of the Federal Trade Commission Act, but erroneously ruled that its practice with reference to the fixing of publication dates comes within the protection of the Copyright Act; and

The Commission being of the opinion that the hearing examiner's initial decision dismissing Count III of the complaint should be set aside (Commissioners Spingarn and Carretta each having set out in a separate opinion their reasons for this action, which reasons differ from those stated in the opinion of Chairman Howrey and concurred in by Commissioner Mead); and

The Commission being of the further opinion that this proceeding should be remanded to the hearing examiner for completion of the taking of evidence and for such other action as may be necessary to finally dispose of the case, with leave to respondent, however, to renew its motion for dismissal of Count III at the close of the taking of evidence;

It is ordered, That the hearing examiner's ruling as to Count I of the complaint herein be, and it hereby is, affirmed insofar as it holds that respondent's practice of granting exclusive book club publishing