

Syllabus

IN THE MATTER OF
RAY R. GOLDIE AND DAVID BACHMAN DOING BUSINESS
AS MERCURY VACUUM STORES AND MERCURY VAC-
UUM CLEANER STORES

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

Docket 6064. Complaint, Nov. 24, 1952—Decision, Jan. 14, 1954

Where two parties engaged in the competitive interstate sale and distribution of new and rebuilt sewing machines and vacuum cleaners through retail stores in California, Washington, and Oregon, to purchasers in various other states and in Alaska, including among the former products several brands made in Japan, upon the back of the vertical arm of which machines the word "Japan", when sold to members of the purchasing public, became covered by the motor and upon which the word "Japan" as displayed in some instances upon a medallion on the front of the vertical arm was so small and indistinct as not to constitute adequate notice that the heads were imported—

- (a) Offered and sold such machines without placing any other mark thereon or otherwise informing the public that the heads thereof were of foreign origin ;
- (b) Represented falsely, directly or by implication, that one of the sewing machines sold by them was manufactured by or connected in some manner with the well and favorably known American firm or firms with which the word "Universal" had long been associated through use of said word as a trade or brand name for said product and conspicuous display thereof on its front horizontal arm and use thereof in their advertising matter; and through use of such trade or brand names enhanced the belief on the part of the public that their said machines were of domestic origin ;
- (c) Frequently advertised rebuilt sewing machines and vacuum cleaners at extremely low prices through their retail stores ;

When in fact such advertisements were not genuine or bona fide offers to sell the articles advertised but were run to obtain the names of persons who were interested in the purchase of such products ; while their salesmen, when responses were obtained, demonstrated said products, their sole purpose was to sell new and much higher priced machines and cleaners ; and products in question were not intended to do satisfactory work and very few of them were sold ;

- (d) Made use in the advertising of their rebuilt vacuum cleaners of such terms as "complete with attachments", "3 days only", and "2-year guarantee" ;

When in fact attachments were frequently not furnished ; offers were continuous, the only changes being slight variations in the prices charged ; no guarantee was given without payment of a substantial sum therefor in addition to the purchase price of the machine ; and use of the word "guarantee" without a statement of the terms and conditions and the manner in which the guarantor would perform was misleading and confusing and constituted a misleading and deceptive practice ;

Consent Settlement

50 F. T. C.

- (e) Falsely represented through their salesmen that their said machines containing heads imported from Japan were manufactured by the Singer Sewing Machine Co.; and
- (f) Quoted directly and through their salesmen fictitious prices for various machines as their usual selling prices and represented that they were able to offer same at a much lower price since they had been used as demonstrators or for some other reason:

When in fact such machines were usually new machines and the price at which they were offered constituted their usual selling price and not, as the prospective purchaser was thus led to believe, a reduced one:

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

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Taggart and *Mr. J. C. Williams* for the Commission.

Mr. Myer Koonin, of Washington, D. C., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 24, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents desiring that this proceeding be disposed of by the Consent Settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, and 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 the answer to said complaint heretofore filed, and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all of the jurisdiction 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, conclusions and order to cease and desist. It is understood that the respondents, in consenting to

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 January 14, 1954, 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.

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 the respondents consent may be entered herein in final disposition of this proceeding are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Ray R. Goldie and David Bachman are copartners doing business under the names of Mercury Vacuum Stores and Mercury Vacuum Cleaner Stores with their principal place of business at Room 216, Fleming Building, San Bernardino, California.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the sale and distribution of new and rebuilt sewing machines and vacuum cleaners through retail stores located in the States of California, Washington, and Oregon. Included in the sewing machines sold by them are several brands, the heads of which are manufactured in Japan.

PAR. 3. In the course and conduct of their business, respondents cause certain of their said products, when sold, to be transported from their places of business in the States of California, Washington, and Oregon to purchasers thereof located in various other States of the United States and in the Territory of Alaska, and at all times mentioned herein have maintained, a course of trade in said products in commerce between various States of the United States and the Territory of Alaska.

PAR. 4. When the sewing machines are sold by respondents to members of the purchasing public, the word "Japan" appears on the back of the vertical arm but such name is covered by the motor so that it is not visible. In some instances, the heads are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Respondents place no other mark on said sewing machines or otherwise inform the public that the heads thereof are of foreign origin.

PAR. 5. 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 inadequately marked showing they are of foreign origin, or if marked and the markings are covered over 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 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 machines.

PAR. 6. Respondents use the word "Universal" as a trade or brand name for one of the sewing machines sold by them, which word is printed or embossed on the front horizontal arm of the head in large conspicuous letters and use said trade or brand name in their advertising matter. The word "Universal" is the name or a part of the name of or used as a trade name, mark or brand by one or more business organizations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using the trade or brand name "Universal" respondents represent, directly or by implication, that their product is manufactured by or connected in some manner with the well and favorably known American firm or firms with which said name has long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and long established concerns whose identity is connected with the word "Universal." The use of said trade or brand name by respondents enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. In the course and conduct of their business, respondents, through their retail stores frequently advertise rebuilt sewing machines and vacuum cleaners at extremely low prices. Such advertisements are not genuine or bona fide offers to sell the articles advertised but are run for the purpose of obtaining the names of persons who are interested in the purchase of sewing machines or vacuum cleaners. When responses are obtained to such advertisements, salesmen for respondents demonstrate the rebuilt sewing machines and vacuum cleaners but their sole purpose is to sell new and much higher priced sewing machines and vacuum cleaners. As a matter of fact, the rebuilt sewing machines and vacuum cleaners are not intended to do satisfactory work. As a result, very few of the rebuilt sewing machines or vacuum cleaners are sold.

PAR. 10. Respondents, in the advertising matter of their rebuilt vacuum cleaners, make use of such terms as "complete with attachments," "three days only," and "2 year guarantee." Such statements are misleading and deceptive. In truth and in fact, attachments are frequently not furnished. The offers are continuous, the only changes being slight variations in the prices charged. The use of the word "guarantee" without a statement of the terms and conditions thereof and the manner in which the guarantor will perform is misleading and confusing and constitutes a misleading and deceptive practice. In truth and in fact, no guarantee is given without the payment of a substantial sum therefor in addition to the purchase price of the machine.

PAR. 11. Respondents' salesmen, in soliciting the sale of sewing machines containing heads imported from Japan, represent, contrary to the fact, that the machines were manufactured by the Singer Sewing Machine Company. The respondents and their salesmen also quote fictitious prices for various machines as the usual selling prices and represent that, because the machines have been used as demonstrators or for some other reason, they are able to offer the machines at a much lower price thus inducing the prospective purchaser to believe that the price asked is a reduced price. As a matter of fact, the machines so offered are usually new machines and the price at which the machines are offered for sale are the usual selling prices.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition with other individuals and with firms and corporations engaged in the sale in commerce of sewing machines and vacuum cleaners.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the trade or brand name "Universal" have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their sewing machines are of domestic origin and manufactured by the well and favorably known firm or firms with which said trade or brand name has long been associated.

Furthermore, the other misleading and deceptive statements enumerated above have the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that such statements are true. All of the aforesaid practices have the capacity and tendency to induce members of the public to purchase respondents' sewing machines and vacuum cleaners because of the erroneous belief engendered thereby.

Order

50 F. T. C.

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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents Ray R. Goldie and David Bachman, individually and as copartners doing business as Mercury Vacuum Stores and Mercury Vacuum Cleaner Stores, or doing business under any other name, and their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sewing machines, vacuum cleaners or other merchandise 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 sewing machines, of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof.

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

3. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

4. Representing, directly or by implication, that attachments are included with their rebuilt vacuum cleaners unless such is the fact.

5. Representing, directly or by implication, that offers are limited as to time when they are continuous offers.

6. Representing, directly or by implication, that any merchandise is guaranteed unless the nature and extent of the guarantee and the manner and form in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

7. Representing, directly or by implication, that the usual or customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business, or that the price at which any merchandise is regularly and customarily sold in the normal course of business is a reduced price.

603

Order

It is further ordered, That the respondents, Ray R. Goldie and David Bachman, individually and as copartners doing business as Mercury Vacuum Stores and Mercury Vacuum Cleaner Stores, 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.

(Sgd.) Ray R. Goldie

RAY R. GOLDIE

(Sgd.) David Bachman

DAVID BACHMAN,

individually and as copartners
doing business as Mercury Vacuum
Stores and Mercury Vacuum
Cleaner Stores.

Date: November 6, 1953.

(Sgd.) Myer Koonin

MYER KOONIN,

721 Sheraton Building,

Washington, D. C.

Attorney for Respondents.

Date: November 10, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 14th day of January 1954.

IN THE MATTER OF
ROYAL APPLIANCE COMPANY, INC. AND DAVID E.
RESNICK

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

Docket 6122. Complaint, Aug. 31, 1953—Decision, Jan. 14, 1954

Where a corporation and its responsible officer competitively engaged in the sale and distribution in the District of Columbia and adjoining States, among other things, of television receivers and replacement parts and in the furnishing of television repair services under contracts whereby they undertook to keep sets in good repair; in advertising their products in newspapers and other advertising media—

- (a) Represented that they would keep television receivers sold by them in good working order for a period of two years, any necessary repairs to be made within a reasonable time after being requested;

The facts being that while such contracts, issued for a consideration, so provided, they did not in many instances comply with such contracts during the second year or provided such service only after undue and unreasonable delay;

- (b) Represented that they would either remove television receivers to one of their four places of business and return them the same day fully repaired and in proper working order, or repair such receivers in the homes of the owners;

The facts being their repairmen constantly refused to repair such receivers in the home; and when they were removed to respondents' place of business for repair, respondents returned them to their owners in many instances only after many days or weeks of delay;

- (c) Falsely represented that they would estimate the cost of necessary parts or services or both parts and services to place television receivers in proper working order and would provide such service and parts for approximately the amount of such estimate;

The facts being their estimates were not bona fide; prices ultimately charged by them for repair in virtually all instances did not approximate their estimates and sometimes exceeded them by more than twice as much; and in most instances where the final charge exceeded the estimate, they failed to apprise the customers of such increase to obtain authorization for the performance of the work, but required nevertheless the payment of the total amount before they would release the receivers to the owners; and

- (d) Represented that they owned, operated, or maintained offices or branches in four different locations in the metropolitan area of Washington, D. C.; when in fact they operated one place of business only in said area:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Costantini & Raffel, of Washington, D. C., for respondents.