

## Decision

IN THE MATTER OF  
ASTOR INDUSTRIES, INC. ET AL.DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT

*Docket 5889. Complaint, June 27, 1951—Decision, Feb. 17, 1954*

Where a corporation and its three officers, engaged in the competitive sale to distributors and retailers of sewing machine heads imported by them from Japan, upon some of which there appeared on the back of the vertical arm a decalcomania displaying the word "Japan" and upon some of which there appeared on brass or brass colored medallions on the front of the vertical arm, the words "Reg. Applied for Hudson" or "Reg. Applied for Hudson, Japan", and of the completed sewing machines of which said heads were a part, and, as thus engaged, in attaching to said heads at the only place provided therefor motors marked "Made in U. S. A." thus concealing the aforesaid marking on said imported heads—

- (a) Offered and sold the aforesaid machines upon some of which the word "Japan" as included on the front of the vertical arm, as above set forth, was, by virtue of the lettering, coloring, and general arrangement, indistinct, difficult to read, unemphasized, and distinguishable only by careful inspection, with no adequate marking to show the place of manufacture or origin of said imported heads; and
- (b) Falsely represented that their said sewing machines were manufactured by or connected in some way with the Hudson Motor Car Company, through conspicuously branding their said machines with the name "Hudson" and use thereon of the words "The Hudson Sewing Machine Co.", and the featuring of said name in instruction booklets, advertising circulars, displays, and letters:

*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. Frank Hier*, hearing examiner.

*Mr. William L. Taggart* for the Commission.

*Mr. Joseph N. Klapper*, of New York City, for respondents.

## 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 Astor Industries, Inc., a corporation, and Max Goldberg, Manny Goldberg, George Zuckerman, Henry Spiegelman, and John D. Bussel, individually and as officers of said corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in

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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 and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, 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 upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, on February 25, 1953, filed his initial decision herein.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record, including briefs of counsel in support of and in opposition to said appeal (oral argument not having been requested); and the Commission, having entered its order granting said appeal, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and 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 Astor Industries, 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 220 Fifth Avenue, New York, New York. Respondents Max Goldberg, Manny Goldberg, George Zuckerman, Henry Spiegelman, and John D. Bussel are president, vice president, vice 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 the individual respondents is the same as that of the corporate respondent. They are the only officials 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 completed sewing machines of which said heads are a part, to distributors and also to retailers who, in turn, sell to the purchasing public. Respondents do not sell to consumers. 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. Whatever markings, showing country of origin, are on the sewing-machine heads imported from Japan by respondents, whether by plaque, medallion, or decalcomania, are left unchanged by respondents. Some of these machines imported by respondents have a metal plaque or medallion, elliptical in shape, attached to the front of the vertical arm by two small rivets, reading in raised letters about  $\frac{1}{4}$  of an inch, "Reg. Applied for Hudson" or "Reg. Applied for Hudson, Japan." Other sewing-machine heads imported by respondents have, in addition, a decalcomania on the rear of the vertical arm about an inch above the bed, gold letters on black lacquer, reading "Japan." Respondents purchase these machines, as above described, with and without attachments for the sewing-machine head (such as light, motor, foot pedal), and these purchases are resold in the same condition by respondents after inspection.

PAR. 4. These machines are designed for electric operation and when a motor is attached at the only place provided for it, the rear of the vertical arm, the decalcomania marking thereof of "Japan" is effectively concealed from even careful inspection, short of removing the motor or turning the machine into an awkward and unusual position, from a user's standpoint, imposed only by a desire to see that particular spot but entirely unlikely to ensue from ordinary or normal use of the machine. There is substantial evidence in the record that purchaser-users never saw this concealed marking or suspected the foreign origin of their purchases. The finding is that such marking is, for practical purposes and to the ordinary user or purchaser, completely and effectively concealed.

PAR. 5. The brass or brass-colored medallions riveted to the front of the vertical arm of respondents' imported machines are in bright gold color, in raised letters only, with no background coloring to emphasize the raised letters and with other lettering "Reg. Applied for Hudson" of similar size and protrusion, so that the word "Japan" is indistinct, difficult to read, unemphasized, and distinguishable only by careful inspection. There is substantial evidence in the record that users and purchasers did not see, or seeing, did not comprehend, such marking.

PAR. 6. When these markings, as hereinabove described, are taken together with the additional facts that the motors attached to these

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machines whether "Hudson" or "Universal" are all marked "Made in U. S. A.," that the instruction booklet prepared and distributed by respondents to dealers and accompanying the machine when sold to the consumer, as well as all of the other advertising of respondents except letters to dealers, fails to mention anywhere the foreign origin of the machine, and that the name "Hudson" is part of the corporate or brand name of a number of American concerns manufacturing and selling domestically, some of them nationally known, it is plain that many consumer-purchasers would be, and are, deceived into the belief that respondents' Hudson sewing machines are made in the United States. The finding, accordingly, is that respondents' imported Hudson sewing machines are not adequately marked to show their place of manufacture or origin.

PAR. 7. The fact that 70-80 percent of these machines are supplied by respondents to dealers in the original containers as they arrived from Japan, which containers plainly show on the outside their foreign origination; the fact that respondents ordered the decals and medallions put on the machines in ordering them from the makers in Japan; and the fact that purchasing dealers are, regardless of markings, under no misapprehension that the machines were imported or that such dealers are instructed by respondents to tell consumers that the machines are imported, are equally irrelevant. Respondents, by placing in the hands of these dealers their sewing machines as hereinabove described, have provided the dealers with the means and instrumentality whereby the purchasing public may be, and is, misled and deceived as to the place of origin of said machines. This is emphasized by the substantial evidence in the record that these riveted medallions may be removed with comparative ease without the marks of removal being discernible except upon the closest inspection. Whether dealers do so deliberately or innocently is beside the point. It is sufficient if the public has been, or can be, misled.

PAR. 8. When sewing machines are exhibited and offered for sale to the purchasing public and such articles are not marked at all or are inadequately marked to show their foreign origin, or if such articles are marked and the markings are concealed, removed, or obliterated, the purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 9. Respondents use the brand name "Hudson" in marketing their imported machines. Every machine is branded with the name in decalcomania, gold letters of equal size on the black lacquer of the machine's horizontal arm, both sides; and across the top of the same arm, in the same manner, there appear the words "The Hudson Sewing Machine Co." In addition to this, the word "Hudson" appears

in raised letters on the metal medallion affixed to the front of the vertical arm. All of respondents' instruction booklets, advertising circulars, display, and letters prominently feature the name "Hudson."

PAR. 10. The name "Hudson" is a part of the corporate name of the Hudson Motor Car Company, a corporation which has been and is favorably known to the purchasing public and which is and has been long established in the automobile industry by selling an automobile known as "Hudson."

A number of witnesses who testified in this proceeding said that they associated the name "Hudson" with the Hudson Motor Car Company or with the Hudson automobile. One of the witnesses said that he associated the name "Hudson" with the manufacturer of the Hudson automobile. He did not know whether Hudson Motor Car Company manufactured anything other than automobiles but there was the possibility that the company also manufactured the sewing machine on which the name "Hudson" appeared. Another witness, a housewife, testified that she would assume anything in the machinery line with the name "Hudson" was made by the Hudson Motor Car Company. Other consumer witnesses testified to the same effect. A representative of the Hudson Motor Car Company testified that the word "Hudson" as it appears on the horizontal arm of respondents' machines and in some of the respondents' advertising literature simulated in appearance some of his company's advertising. There is also in the record a stipulation by opposing counsel to the effect that if three named consumers who had purchased respondents' machines were called as witnesses, they would testify that the name "Hudson" did not, to their minds, indicate that the machines had any connection whatsoever with the Hudson Motor Car Company.

Based upon the whole record, the Commission concludes, and therefore finds, that by using the word "Hudson" as a trade or brand name for their sewing machines in the manner hereinabove found, the respondents have represented, contrary to the fact, that their sewing machines are manufactured by or connected in some way with the Hudson Motor Car Company. Respondents' use of the word "Hudson" has also enhanced the erroneous and mistaken belief on the part of the purchasing public that respondents' sewing machines are of domestic origin.

PAR. 11. There are among 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, and this preference extends to sewing machines. There are also many members of the purchasing public who prefer to purchase products, including sewing machines, wh

are manufactured by, or connected in some way with, well and favorably known American firms rather than products manufactured by a firm or firms which are not well known to the purchasing public.

PAR. 12. The booklet which respondents furnish with each machine sold to dealers, and which the dealer in turn gives the user-purchaser when the machine is resold, contains on the inside of the front cover page the following:

HUDSON  
ELECTRIC SEWING MACHINE  
Twenty Year Guarantee Bond

This certifies that \_\_\_\_\_ is the owner of HUDSON Electric Sewing Machine Serial No. \_\_\_\_\_ Purchased on \_\_\_\_\_.

1. The HUDSON Electric Sewing Machine covered in this guarantee is warranted to be free from defects in workmanship and material for a period of twenty years from the date of this certificate.

2. All HUDSON Electric Sewing Machine parts are made of the finest materials. All friction parts are doubly protected for long life. Any part found defective will be replaced by your HUDSON dealer free of charge for a period of twenty years.

3. Parts that normally require replacement such as bobbin case, bobbins, needles and attachments are not covered by this guarantee.

4. The HUDSON Sewing Machine motor and motor accessories are guaranteed for one year.

HUDSON Electric Sewing Machine Dealer.

This is signed by the local retailer who sells to the consumer. The complaint charges that the use of the word "guarantee" without disclosing the terms and conditions of the guarantee is confusing and misleading.

PAR. 13. The evidence is in conflict. Several witnesses most of whom had never seen the guarantee before, and some of whom were not shown it when testifying, have the impression, notwithstanding that the signature line is plainly for the dealer to sign, that it was a guarantee or warranty by the manufacturer of the product. One of these, though, testified he would go to the store he purchased from, if anything went wrong. This, of course, is not the charge in the complaint. Only one witness stated he did not understand from it whether parts or vice, or both, were guaranteed, and how long for each. On the other hand, two business executives, one in the sewing machine business the other unconnected with it, testified, in the first instance, that except the term of years and the fact of dealer backing instead of manufacturer backing, it was the same as the guarantee of his company; in second instance, that the average person reading it would know he was supposed to get. In addition, a labor union official had trouble understanding it. This, taken with the wording and sub-

stance of the document itself and the demeanor of the sole witness testifying that it was confusing to him, makes the preponderance of evidence against the charge, and the finding, accordingly, is that the use of the word "guarantee" is not misleading or confusing, and that the guarantee does disclose its terms and conditions.

PAR. 14. Respondents, in the course and conduct of their business, are in substantial competition in commerce with makers and sellers of domestically made sewing machines and also with sellers of imported sewing machines.

PAR. 15. The failure of respondents adequately to disclose on the sewing machine heads that they are manufactured in Japan and the use of the brand or trade name "Hudson" have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that respondents' said products are of domestic origin and are manufactured by, or connected in some way with, a well and favorably known domestic manufacturer, and into the purchase of sewing machines of which said heads are a part because of such erroneous and mistaken belief. As a result thereof trade in commerce has been unfairly diverted to respondents from their competitors and injury has been and is being done to competition in commerce.

#### CONCLUSION

The respondents import sewing machine heads from Japan. When these heads are assembled and processed into completed sewing machines, whatever markings there were on the heads showing the country of origin are, for all practical purposes, effectively concealed from the ordinary user or purchaser. Respondents use the name "Hudson" as a brand or trade name for their completed sewing machines. The name "Hudson" appears on the front horizontal arm of the sewing machines, and is prominently featured in respondents' advertising literature. As a result of respondents' failure to adequately disclose on the sewing machine heads that they are imported from Japan and the use of the brand or trade name "Hudson," purchasers and prospective purchasers are led to believe that respondents' sewing machines are of domestic origin and are manufactured by, or connected in some way with, a well and favorably known domestic manufacturer. A substantial number of the purchasing public has a decided preference for sewing machines manufactured in the United States over sewing machines manufactured in whole or in part in Japan. There are also many persons who prefer to purchase sewing machines manufactured by, or connected in some way with, well and favorably known American firms rather than sewing machines manufactured by a firm or firms which are not well known to the purchasing public.

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The fact, if it be so, that the sewing machine heads imported by the respondents were inspected and passed by United States Customs officers at the port of entry as being properly or adequately marked is immaterial and no defense to this proceeding. *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954. Also, whether or not the Singer Sewing Machine Company manufactures and imports from Great Britain sewing machines which are not marked at all, or not adequately marked, as to country of origin is immaterial and no defense to this proceeding. *Independent Directory Corp. v. Federal Trade Commission*, 188 F. 2d 468; *Ford Motor Co. v. Federal Trade Commission*, 120 F. 2d 175, 182.

The Commission therefore concludes that the acts and practices of the respondents as hereinabove 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

*It is ordered*, That the respondents, Astor Industries, Inc., a corporation, and its officers, and Max Goldberg, Manny Goldberg, George Zuckerman, Henry Spiegelman, and John D. Bussell, as officers of said corporation, and said 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 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 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.

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

*It is further ordered*, That 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 the order to cease and desist.

Commissioner Carretta not participating.

IN THE MATTER OF  
PAMCO, INC.; AND MAX CHISSIK AND ARTHUR FOYER,  
DOING BUSINESS AS SEWING MACHINE FACTORS

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

*Docket 6012. Complaint, July 18, 1952—Decision, Feb. 17, 1954*

Where two partners engaged, in substantial competition in commerce with makers and sellers of domestic sewing machines and with sellers of imported sewing machines, some of whom adequately disclosed to the public the foreign origin of their machines or parts thereof, in processing and assembling into sewing machines, heads imported from Japan, upon the back of the vertical arm of which the word "Japan" became covered by the motor attached to the head and on some of which a medallion, readily removable, placed on the front of said arm disclosed the word "Japan" in such small and indistinct fashion as not to constitute adequate notice to the public that said heads were imported—

- (a) Offered and sold sewing machines thus completed with no mark on the heads or on the complete machines of which said heads were a part showing foreign origin, and without otherwise informing the public of the foreign origin of said heads before the offer for sale to the public of the machines in question ; and
- (b) Falsely represented that their machines were manufactured by or connected in some way with the American firm or firms with which the name "Champion" had long been associated, through printing or embossing on the front horizontal arm of the head the trade or brand name "Champion", and use thereof in their advertising matter ;
- (c) Falsely represented, directly or by implication, through the depiction of a portable electric sewing machine in their advertising and the figure "\$169.95" that the machines in question were customarily sold to members of the public for said sum ;

When in fact said price was wholly fictitious and greatly in excess of the amount usually charged therefor ; and

- (d) Misleadingly used the words "unconditionally guaranteed" in said advertising through failure to disclose the terms and conditions of such guarantee :

*Held*, That such acts and practices constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

Before *Mr. John Lewis*, hearing examiner.

*Mr. William L. Taggart* for the Commission.

*Mr. Irving Schoenfeld*, of San Francisco, Calif., for Pamco, Inc., Arthur Foyer and Julius Foyer.

*Mr. Bertrand F. Lurie*, of San Francisco, Calif., for Edward Sassoon and H. P. Haslehurst.

*Mr. Alfred M. Miller*, of San Francisco, Calif., for Max Chissik and Arthur Foyer.