

Decision

IN THE MATTER OF
PICKOW DISTRIBUTING CORPORATION ET AL.DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5890. Complaint, June 27, 1951—Decision, Mar. 10, 1954

Where a corporation and its three officers engaged in the sale of sewing machine heads imported from Japan—upon which there appeared, on the back of the vertical arm, the words “Made in Occupied Japan” or “Japan”, or upon the front, the word “Japan”—and of completed sewing machines of which said heads were a part, to independent dealers and retailers and, as thus engaged, in attaching to the back of said heads, at the only place provided therefor, motors marked as “Universal Motor” and “Made in U. S. A.”—name of the well-known domestic product—and thus effectively concealing such markings—

- (a) Offered and sold the aforesaid imported sewing machines, upon some of which the word “Japan”, as included with others on the front of the vertical arm, was distinguishable only by more careful inspection than a purchaser or user would ordinarily bestow and with no adequate marking to show their place of manufacture or foreign origin;
 - (b) Falsely represented that their said machines were manufactured by or connected in some way with well-known firms through displaying in many instances on the horizontal arms of said machines the trade names “Hoover” or “Eureka”, and through the use of said names in literature distributed by them with the machines they sold, as well as in price lists and similar material distributed by them; and thereby also enhanced the erroneous belief on the part of the purchasing public that said machines were of domestic origin;
- With result of providing dealers with the means for misleading the purchasing public as to the place of origin and manufacture of said machines:

Held, That such acts and practices 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. N. Randall Bassett, of New Haven, Conn., for respondents.

Mr. E. K. Gubin, of Washington, D. C., for Hoover Co., intervenor.

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, Pickow Distributing Corporation, a corporation, and Louis Pickow, Harold Gessner, and Abraham Lippman, 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 commerce

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in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer and amendment to their answer, 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, amended answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, on May 5, 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. Request was made on behalf of The Hoover Company for leave to intervene in the proceeding and said request was granted to the extent of permitting briefs on the said appeal to be filed. Thereafter, this proceeding regularly came on for final consideration by the Commission upon the record, including briefs of counsel supporting the complaint and of special counsel for the intervenor in support of the said appeal and brief of counsel for respondents in opposition thereto (oral argument not having been requested by either counsel supporting the complaint or the respondents); and the Commission, having entered its order granting in part and denying in part the said appeal and being 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 conclusions 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 Pickow Distributing Corporation is a corporation organized and existing under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 55 Whalley Avenue, New Haven, Connecticut. Respondents Louis Pickow, Harold Gessner, and Abraham Lippman are, respectively, President and Treasurer, Vice-President, and Secretary of the 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 corporate respondent.

PAR. 2. Respondents are now and have been for several years last past engaged in the sale of sewing machine heads imported from

Japan and completed sewing machines of which said heads are a part, to independent dealers or retailers who, in turn, sell them 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 Connecticut to the purchasers thereof located in various other States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been, and is, substantial.

PAR. 3. When the sewing machine heads are received by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm either in gold decalcomania on the black enamel of the arm or else on the tin metal tag affixed by rivets to the front of the vertical arm with the word "Japan" in raised letters. These markings which appear on the back of the vertical arm are from $\frac{3}{8}$ to $\frac{1}{2}$ inch above the bed of the machine. These markings are left unchanged by respondents. The 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, these markings are 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; which would spring only from a desire to see that particular spot but which action is entirely unlikely to ensue from ordinary or normal use of the machine. On the sewing machines so marked, there are no other markings indicating country of origin, and there is a preponderance of 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.

Some of the sewing machine heads, when received by respondents, instead of the markings hereinabove described have on the front of the vertical arm facing the user in normal operation a brass or brass-colored medallion affixed to the vertical arm by side rivets about one inch above the bed. This medallion bears the legend "DE LUXE" in raised letters approximately $\frac{1}{4}$ or $\frac{3}{8}$ inch high, and underneath that the words "Finest Family Sewing Machine" in raised letters approximately $\frac{1}{4}$ of an inch high, and underneath that the word "Japan" in raised letters approximately $\frac{1}{8}$ of an inch high. These medallions are in bright gold color in raised letters only, with no background coloring to emphasize the raised letters, so that the word "Japan" is indistinct, difficult to read, unemphasized, and distinguish-

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able only by more careful inspection than a purchaser or user would ordinarily bestow.

A number of the sewing machines, marked as hereinabove described, are part of the evidence in this proceeding. All of these machines have attached to them, on the rear of the vertical arm, small motors which provide the power for operation, and in each instance the motor is marked "Universal Motor" and, in addition, "Made in USA." The Universal Motor is to the public a well-known product of domestic manufacture. In addition to this, many of these machines are marked instances on both sides, with one of the trade names "Hoover" or "Eureka." These names are associated by members of the purchasing public with well and favorably known domestic concerns.

Although there is some conflict in the testimony in the record as to actual deception, the preponderance of substantial, reliable, and probative evidence is that purchaser-users did not see, or seeing did not comprehend, the markings appearing on respondents' sewing machines indicating their foreign origin. The finding, accordingly, is that respondents' imported sewing machines are not adequately marked to show their place of manufacture or origin.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked to show that they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. Respondents use the words "Hoover" and "Eureka" as trade or brand names for many of their said sewing machines and sewing machine heads. The sewing machines and sewing machine heads which are sold under the brand or trade name "Hoover" have the said word in gold decalcomania on the black enamel, on both sides of the horizontal arm. The word "Eureka" similarly appears on the sewing machines and sewing machine heads sold under that name. The words "Hoover" and "Eureka" also appear in literature distributed by the respondents with the machines they sell, as well as in price lists and similar material distributed by respondents to prospective purchasers.

The names "Hoover" and "Eureka" are well-known American brand or trade names. The name "Hoover" has been used for many years by The Hoover Company as a brand name for vacuum cleaners and other products. The Eureka Williams Company has used the word "Eureka" for many years as a brand name for vacuum cleaners. Vacuum cleaners and other products bearing the name "Hoover" have been advertised extensively by The Hoover Company, and the Eureka Williams Company has extensively advertised its products under the

trade name "Eureka." The names "Hoover" and "Eureka" and the concerns with which the names are identified have become well and favorably known to the purchasing public.

PAR. 6. The evidence in the record establishes, as the hearing examiner found in his initial decision, that respondents' use of the said brand or trade names for their sewing machines and sewing machine heads causes confusion in the minds of many members of the purchasing public. For example, one witness testified that if she saw a sewing machine with the name "Hoover" on it, she would think the machine was made by the manufacturer of Hoover vacuum cleaners. Another witness testified that if he heard advertisements for Hoover sewing machines on the radio, he would assume the machines were manufactured by the Hoover Company. Still another witness testified that he would imagine a sewing machine bearing the name "Hoover" was made in the United States maybe by a "company connected with the Hoover vacuum." The testimony in the record with respect to the name "Eureka" is similar to that with respect to the name "Hoover." There is also in the record a stipulation between opposing counsel to the effect that respondents could call several witnesses who would testify that they purchased sewing machines bearing the name "Hoover" or "Eureka," and that these names did not to their minds indicate that the machines had any connection whatsoever with either The Hoover Company or the Eureka Williams Company.

The Commission is of the opinion, and therefore finds, that respondents, by using the words "Hoover" and "Eureka" as trade or brand names for their sewing machines and sewing machine heads in the manner hereinabove found, have represented, contrary to the fact, that their said products are manufactured by, or connected in some way with, the well-known firms with which said names have long been associated. Respondents' use of these words has also enhanced the erroneous and mistaken belief on the part of the purchasing public that respondents' sewing machines are of domestic origin.

PAR. 7. The complaint in this proceeding also alleges that the respondents, by using the word "Mercury" as a brand or trade name for their sewing machines and sewing machine heads, have represented, contrary to fact, that said products are manufactured by well-known American firms with which the name "Mercury" has long been associated. The Commission is of the opinion, and finds, that such allegation has not been sustained by the evidence.

PAR. 8. There are among members of the purchasing public a substantial number having a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machine heads. There

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are also many members of the purchasing public who prefer to purchase products, including sewing machines, which are manufactured by, or connected in some way with, well and favorably known American firms, rather than products manufactured by a firm or firms not well known to the purchasing public.

PAR. 9. Respondents, by placing in the hands of dealers their sewing machine heads and completed sewing machines inadequately marked as to place of origin, as hereinabove described, and by using the trade or brand names "Hoover" and "Eureka," provide said dealers with the means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said machines and the manufacturer thereof.

PAR. 10. Respondents, in the course and conduct of their business, are in substantial competition in commerce with makers and sellers of domestic-made sewing machines and also with sellers of imported sewing machines.

PAR. 11. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the brand or trade names "Hoover" and "Eureka," 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, well and favorably known domestic manufacturers, 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

Respondents sell completed sewing machines of which imported heads are a part and imported sewing machine heads without adequately disclosing the country of origin of the sewing machine heads. The respondents use the words "Hoover" and "Eureka" as brand or trade names for some of their sewing machines and sewing machine heads. These words are placed on the sewing machine heads and are also used in respondents' advertising literature. As a result of the failure to adequately disclose on the sewing machine heads that they are imported from Japan and the use of the names "Hoover" and "Eureka," purchasers and prospective purchasers are led to believe that respondents' sewing machines and sewing machine heads are of domestic origin and are manufactured by, or connected in some way

with, well and favorably known domestic manufacturers. Many members of the purchasing public have 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 not well known to the purchasing public.

The fact, if it be so, that respondents' imported sewing machine heads 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 (*L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954). Also, whether or not the Singer Sewing Machine Company or The Hoover Company or any other concern or individual imports into this country articles of foreign manufacture which are not marked, or are inadequately marked, as to place 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).

The fact that respondents sell only to dealers, many or all of whom are aware of the origin of the sewing machine heads or are informed thereof by respondents, is no defense to the charge of inadequate or concealed marking, since the sewing machines of which the imported heads are a part are obviously intended for ultimate consumer purchase and respondents as sellers have placed into the hands of the dealers the means and instrumentality whereby the ultimate purchaser may be misled and deceived. The sewing qualities, efficiency, and performance of respondents' sewing machines as compared with sewing machines of domestic manufacture or other makes or designs of imported sewing machines are not in issue in this proceeding.

The Commission, therefore, concludes that the acts and practices of the respondents as hereinabove found are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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, Pickow Distributing Corporation, a corporation, and its officers, and Louis Pickow, Harold Gessner, and Abraham Lippman as officers of said corporation, and said respondents' representatives, agents, and employees, directly or through

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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 words "Hoover" or "Eureka," or any simulations thereof, as brand or trade names to designate, describe, or refer to their sewing machines or sewing machine heads; or representing through the use of any other words or in any other manner that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturers.

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.

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IN THE MATTER OF
AR. WINARICK, INC., ET AL.

DECISION, AND DISSENTING OPINION IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6032. Complaint, Nov. 12, 1952¹—Decision, Mar. 10, 1954

Where a corporation and its three officers, engaged in the competitive interstate sale of their "Jeris Antiseptic Hair Tonic", for use in addition to its cosmetic purposes, in the treatment and prevention of hair and scalp diseases, and of an after-shave lotion called "Fore"; in advertising their said "Hair Tonic" in magazines—

- (a) Falsely represented that the use of said tonic with massage would help promote hair growth and prevent excessive falling hair, through such statements as "helps promote healthy hair growth" and "relieves * * * excessive falling hair"; and
- (b) Falsely represented that barbers, by reason of their training, are capable of diagnosing and treating diseased conditions of the hair and scalp through such statements as "For hair and scalp care you can depend on your Barber's recommendation! Your barber is trained in hair and scalp care and qualified to advise you. So if you happen to be troubled with dandruff, falling hair or some other hair problem, as so many men are, remember to consult your barber":

Held, That such representations constituted false advertisements within the meaning of Sec. 12, and that use thereof constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Lewis G. Bernstein, of New York City, for respondents.

DECISION OF THE COMMISSION

STATEMENT OF THE CASE

The Federal Trade Commission on August 18, 1952, issued a complaint and on November 12, 1952, issued an amended complaint charging respondent Ar. Winarick, Inc., and three of its officers, Jules Winarick, Nathan Winarick and Floyd H. Pepper, with having violated the Federal Trade Commission Act by disseminating false advertisements in connection with the sale of their products "Jeris Antiseptic Hair Tonic" and "Fore," an after shave lotion. Respondents filed an answer denying that their advertisements were in violation of law.

Pursuant to notice, hearings were held in New York City on January 5 and 6 and February 10, 1953, before J. Earl Cox, a hearing examiner,

¹ Amended.