

IN THE MATTER OF
SEWING MACHINE SALES CORPORATION ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6149. Complaint, Dec. 3, 1953—Decision, Aug. 3, 1954

Order requiring a corporate seller with main office in New York City and branch in Atlanta, Ga., to cease selling sewing machines, heads of which were imported from Japan, without adequate disclosure thereon of the country of origin, and to cease misrepresenting the maker of the machines by prominent use of the brand name "Admiral" on the main horizontal arm.

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

Mr. Harold A. Kennedy for the Commission.

Mr. Samuel Woolan, of New York City, for respondents.

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 August 3, 1954, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges respondents with the use of certain unfair and deceptive practices in violation of the Federal Trade Commission Act. After the filing of respondents' answer, hearings were held at which evidence in support of the complaint was introduced, no evidence being offered by respondents. Counsel for all parties elected not to file proposed findings and conclusions, and oral argument was not requested. The matter now comes on for final consideration on the merits.

2. Respondent Sewing Machine Sales Corporation 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 1435 Boone Avenue, New York, New York. A branch establishment is located at 128 Marietta Street, N. W., Atlanta, Georgia. Respondents Samuel S. Cohen, Herman Smith and Eli Cohen are President, Treasurer and Secretary, respectively, of the corporation and formulate its policies and direct and control all of its acts and practices.

3. Respondents are engaged in the sale of sewing machines and sewing machine heads, their sales being made either to retail dealers who resell to the consuming public or to wholesale distributors who in turn resell to such retailers. The business is interstate in character, respondents selling and shipping their products to numerous purchasers located in various States of the United States other than New York and Georgia. Respondents are thus engaged in commerce as that term is defined in the Federal Trade Commission Act. In the conduct of their business, respondents are in competition in such commerce with other corporations and individuals engaged in the sale of similar products.

4. The complaint contains two charges: first, that the "heads" used by respondents in their sewing machines, that is, the mechanical part of the machine or the entire machine except the cabinet, are imported from Japan; that this fact is not disclosed or is not sufficiently disclosed to the public; and as a result the public purchases or is likely to purchase respondent's machines under the erroneous impression that the machines are manufactured in the United States; and, second, that respondents use as a trade name for their machines the word "Admiral" or the words "Admiral Crescent," thus causing the public to believe that such machines are products of another company, which sells household appliances under the trade name "Admiral."

5. The heads used in respondents' machines are in fact imported from Japan. When sold by respondents, the machines bear on the front of the machine or head a medallion on which there appears in large type the legend "Reg. Appld. For" and in somewhat smaller type the words "The Family Sewing Machine." There also appears, in type much smaller than that used in either of the above, the legend "Japan" or "Made in Japan." Only as a result of a very close examination would a member of the public see this last legend and thereby become apprised of the fact that the machine was made in Japan. There is testimony from a substantial number of customers that when purchasing respondents' machine they did not notice the legend, and that it was not until much later, when the legend was specifically called to their attention, that they became aware that the machine was not manufactured in the United States but in Japan. In the absence of adequate disclosure to the contrary, the public assumes that sewing machines are of domestic rather than foreign origin, and there is a preference on the part of the public for sewing machines manufactured in the United States over those made in Japan. Upon examination of the medallion in question and in the light of the testimony,

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it is concluded that here the disclosure of foreign origin was not sufficiently conspicuous to inform the public.

6. (a) On the issue as to the trade name, the evidence fails to establish use by respondents of the single word "Admiral." Respondents have, however, used the name "Admiral Crescent," the word "Admiral" being prominently displayed in very large type on the front of the main horizontal arm of the machine, and the word "Crescent" appearing immediately below in much smaller and much less conspicuous type. On the top of this horizontal arm but in relatively small and inconspicuous type appears respondents' corporate name "Sewing Machine Sales Corp."

(b) Some nine members of the public who had purchased respondents' machines from a dealer in Pittsburgh, Pennsylvania, testified that upon seeing the word "Admiral" on the machine they assumed the machine to be a product of the well known American company which sells household appliances under the trade name "Admiral." The company in question is the Admiral Corporation, and the word "Admiral" is the trade name or mark of that company. For many years the company has advertised and sold its products, particularly television sets, radios and refrigerators, under this trade name, and the name and products are well and favorably known to the public. There is no connection between the Admiral Corporation and respondents or their machines.

(c) The use by respondents of the word "Crescent" in connection with the word "Admiral" and the imprinting of respondents' corporate name on the machine is not sufficient to prevent the erroneous impression of the public as to the identity and origin of the machines. It is evident from the testimony that prospective purchasers either do not notice these additional words at all or attach no significance to them.

CONCLUSIONS

It is concluded:

1. The proceeding is in the public interest.
2. The failure of respondents to disclose adequately on their sewing machine heads that such products are made in Japan, and the use of the word "Admiral" as a part of the trade name for their machines, have the tendency and capacity to mislead and deceive a substantial portion of the public as to the origin and identity of respondents' products, and the tendency and capacity to cause such members of the public to purchase such products as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondents from their competitors. Re-

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spondents' practices serve also to place in the hands of retail dealers means and instrumentalities whereby such dealers may be enabled to mislead and deceive the public. Such practices are all to the prejudice 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

It is ordered that the respondents, Sewing Machine Sales Corporation, a corporation, and its officers and Samuel S. Cohen, Herman Smith and Eli Cohen, individually, 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 or sewing machine heads 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 manner that it will not be hidden or obliterated, the country of origin thereof.
2. Using the word "Admiral" or any simulation thereof, either alone or in connection with any other word or words, to designate, describe or refer to respondents' sewing machines or sewing machine heads; or representing through the use of any other word or words, or in any other manner, that said sewing machines or sewing machine heads are manufactured by anyone other than the actual manufacturer.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered that the respondents herein 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 [as required by said declaratory decision and order of August 3, 1954].

IN THE MATTER OF

H. J. HEINZ COMPANY ET AL.

Docket 5994. Order and opinion, August 10, 1954

Order denying appeal from initial decision holding evidence insufficient to support allegations of concerted action to follow a price leadership plan.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Leslie S. Miller, Mr. William J. Boyd, Jr., Mr. Floyd O. Collins and *Mr. Wilmer L. Tinley* for the Commission.

Covington & Burling, of Washington, D. C., for various corporations, individuals and officers of said corporations, and along with—

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for H. J. Heinz Co., Joseph J. Wilson, Howard E. McKinley, Everitt E. Richard and Cyril P. Roberts;

Marshall, Melhorn, Block & Belt, of Toledo, Ohio, for Campbell Soup Co., Joseph Campbell Co., Walter A. Scheid, Edgar W. Montell and Harold R. Collard;

Barnes, Hickam, Pantzer & Boyd, of Indianapolis, Ind., for Stokely Van-Camp, Inc., Herbert F. Krimendahl and A. A. Ehrman;

Mr. G. Lincoln Lewis, of Indianapolis, Ind., for Stokely Van-Camp, Inc., Herbert F. Krimendahl, Samuel Hammond, Russell Kline and A. A. Ehrman;

Holloway, Peppers & Romanoff, of Toledo, Ohio, for Foster Canning, Inc.;

True & Meyer, of Port Clinton, Ohio, for Lake Erie Canning Co. of Sandusky, J. Weller Co. and George Wenger.

Marchal & Marchal, of Greenville, Ohio, for Beckman & Gast Co., Inc., Greenville Canning Co., Inc., St. Mary's Packing Co., Inc., Robert H. Timmer, Thomas G. Timmer, Luke F. Beckman and Charles F. Stemley Canning Co.

Avery & Avery, of Bowling Green, Ohio, for Buckeye Canning Co., Inc.

Estabrook, Finn & McKee, of Dayton, Ohio, for Gibsonburg Canning Co., Inc. and St. Mary's Packing Co., Inc.

Mr. Joseph R. Harmon, of Fullerton, Calif., and *Fuller, Harrington, Seney & Henry*, of Toledo, Ohio, for Hunt Foods, Inc. and Hunt Foods of Ohio, Inc.

Short & Dull, of Celina, Ohio, for Sharp Canning Co.

Ham & Ham, of Wauseon, Ohio, and *Mr. Carl C. Leist*, of Circleville, Ohio, also for Winorr Canning Co. and George W. Conelly.

Gebhard & Hogue, of Bryan, Ohio, for Richard C. Boucher.
Lusk & Shaw, of Wapakoneta, Ohio, for Henry A. Diegel.

ORDER DENYING APPEAL FROM INITIAL DECISION

This matter coming on to be heard by the Commission upon the appeal of counsel in support of the complaint from that portion of the initial decision of the hearing examiner dismissing the price fixing allegations contained in subparagraphs 8 and 9 of Paragraph Ten of the complaint herein, and the respondents' briefs in opposition to said appeal; and

The Commission having considered the entire record, including the exceptions raised by counsel in support of the complaint, and having determined that the hearing examiner's initial decision was correct:

It is ordered, in conformity with the written opinion of the Commission being issued simultaneously herewith, that the appeal of counsel in support of the complaint be, and it hereby is, denied.

It is further ordered that the case be, and it hereby is, remanded to the hearing examiner for further proceedings in regular course.

Commissioner Carretta not participating.

OPINION OF THE COMMISSION BY GWYNNE, COMMISSIONER

Respondents include 24 companies engaged in the processing of tomatoes in Ohio, the Ohio Cannery Association, Inc. (a trade association), individuals who are officers, directors, employees, or owners of the above companies, and officers or directors of the Ohio Cannery Association, Inc. or the Indiana Cannery Association (also a trade association).

Briefly stated, the complaint charges respondents with violation of Section 5 of the Federal Trade Commission Act by entering into an understanding, agreement and combination to restrain trade in interstate commerce in raw tomatoes, and as a part of said understanding, with engaging in a planned common course of action to, first, boycott and otherwise illegally interfere with said tomato growers, and second, to fix and maintain prices to be paid for raw tomatoes.

At the conclusion of the evidence in support of the complaint, the hearing examiner dismissed the entire complaint as to the Ohio Cannery Association, Inc., its officers and directors, the secretary-treasurer of Indiana Cannery Association, Inc., and certain canning companies and individuals named in the initial decision. He also dismissed

the complaint as to the allegations in Subparagraphs 2, 6, 8 and 9 of Paragraph 10 as to all respondents. Counsel supporting the complaint appealed from the decision only insofar as it dismissed the allegations in Subparagraphs 8 and 9 of Paragraph 10 as to the "remaining respondents," that is, the respondents not included in the list set out in the initial decision as to whom the complaint was dismissed in its entirety. The appeal was submitted on written briefs without oral argument.

The only question involved in this appeal has to do with the sufficiency of the evidence to make a prima facie case as to the following allegations in Paragraph 10 of the complaint:

"The respondents herein have been, and are now, engaged in unfair methods of competition and unfair acts or practices in commerce, as 'commerce' is defined in the Federal Trade Commission Act, in that they have entered into an understanding, agreement and combination to restrain trade and interstate commerce in raw tomatoes. The respondents, as a part of the aforesaid understanding, agreement and combination, have engaged in a planned common course of action:

* * * * *

8. To fix and establish, and in fixing and establishing, prices to be paid by respondent processors to the growers for their raw tomatoes; and

9. To adopt and use, and in adopting and using, as a part of the aforesaid understanding, agreement and combination to fix and establish prices, a price leadership plan whereby respondent, H. J. Heinz Company, respondent Campbell Soup Company, or respondent Joseph Campbell Company, or two or more of said respondents, at times have led in the announcement and publication of their price or prices for raw tomatoes, after which, pursuant to mutual understanding among all respondent processors, the other respondent processors adopted, announced, published, and followed the same prices."

All of the companies included among the remaining respondents operate tomato processing plants in Ohio. Most of the raw tomatoes to be processed are bought from individual growers under written contracts entered into just prior to the planting season, although some are bought later on the open market from growers or brokers. It is the practice for individual processors to announce their prices shortly before contracts are offered to the growers. In determining its opening price, each processor takes into consideration many circumstances, often including prices already announced by other processors.

Late in 1949, certain tomato growers formed a cooperative organization known as Cannery Growers, Inc. Under the contract between

Cannery Growers, Inc. and its members, the cooperative was designated as the sole agent of the members to negotiate contracts with the processors for the growing and selling of tomatoes and the members agreed not to enter into a contract with any processor unless such contract had previously been approved by Cannery Growers, Inc.

In January 1951, Cannery Growers, Inc. notified the processors that it was ready to negotiate contracts in behalf of its members at a price of \$40-\$34, that is, \$40 per ton for U. S. Government Grade 1, and \$34 for Grade No. 2. Most of the processors did not negotiate with the cooperative for various reasons, among which was that the asking price was too high. Early in 1951, various processors announced their prices and began the effort to sign up growers. The prices announced by some processors were identical. For example Joseph Campbell Company (buying agent for Campbell Soup Company), H. J. Heinz, Hunt Foods, Inc., and Winorr Canning Company, announced \$33-\$21. Other opening prices varied from \$36 to \$33 for Grade No. 1 and from \$26 to \$20 for Grade No. 2.

In their appeal brief, counsel supporting the complaint "do not contend that the record establishes that the prices announced at the meetings were agreed upon in advance by the respondent companies; nor * * * that the record establishes that there was uniformity among the respondents as to those prices or as to prices they actually paid for tomatoes." They do contend, however, that there was cooperation and agreement among the respondents to adopt and adhere to the prices previously announced by certain of them and that such cooperation and agreement was for the purpose of negotiating with the growers for advance contracts during the critical period, that is, the "contracting season." In other words, the claim is that there was concerted action to adhere to the prices individually announced (even though different) to further the boycott of Cannery Growers, Inc.

The record in the case is very voluminous both in regard to the allegations of boycotting and price fixing. The evidence shows that meetings were held on March 17, March 31 and April 13, of 1951, at which most of the respondents were represented. At these meetings, many things of mutual interest were discussed and some mention was made of prices already announced by some processors. Among the many exhibits are letters from the manager of the Toledo, Ohio plant of respondent Hunt Foods, Inc. to his immediate superior giving a running account of the situation as the local manager observed it. After the opening price announcements, some processors changed their prices. For example, after announcing \$33-\$21 in March,

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Hunt Foods, Inc. went to \$34-\$22.50 in April, and to \$36-\$26 in May. Other respondents also made changes, although some did not occur until after the normal contracting season was over.

The hearing examiner held that there was not sufficient competent evidence in the record to support the allegations of Subparagraphs 8 and 9 of Paragraph 10 of the complaint. After considering the record, we conclude that the hearing examiner decided this issue correctly.

The appeal is therefore denied and it is directed that an order issue accordingly.

Commissioner Carretta did not participate herein.

Complaint

IN THE MATTER OF

SANITARY FEATHER CO., INC., AND DANIEL HUTTNER

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING
ACT

Docket 6202. Complaint, Apr. 22, 1954—Decision, Aug. 14, 1954

Consent settlement order requiring a Chicago manufacturer of wool products to cease misbranding "wool" products as defined by the Wool Products Labeling Act through labeling or tagging bed comforters containing cotton batting or padding as "All New Material Consisting of Wool Batting", and through failing to stamp or label certain bed comforters as required by the Act.

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

Mr. George E. Steinmetz for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sanitary Feather Co., Inc., a corporation, and Daniel Huttner, individually, and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sanitary Feather Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois. Daniel Huttner is president and treasurer of said respondent corporation, and this individual formulates, directs, and controls the acts, policies, and practices of said corporate respondent. The offices and principal place of business of said respondents are located at 5034 South State Street, Chicago 9, Illinois.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1953, respondents have manufactured for introduction into commerce, introduced, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Wool