

IN THE MATTER OF

WILLIAM R. PEARSALL, FRANCIS COLUCCI AND AARON
SILVERMAN DOING BUSINESS AS BOND SEWING
STORESORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6112. Complaint, May 5, 1954¹—Decision, Nov. 23, 1954*

Order requiring a concern engaged in selling domestic and imported sewing machines from its principal office in New York City and branches in New Jersey, Pennsylvania, Maryland, Georgia, and Florida, to cease branding sewing machines made in Japan or machines of which Japanese heads were a part with the legend "Made in U. S. A." and American names and selling them with no disclosure of their foreign origin; advertising as "bait", machines never intended to be sold at the prices published, for the purpose of obtaining leads to prospects; advertising false guarantees of parts actually unobtainable; and misrepresenting the ease of operation of advertised machines.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Michael J. Vitale for the Commission.

Mr. Eugene W. DuFlocq, of New York City, for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

On July 27, 1953, the Commission, pursuant to the provisions of the Federal Trade Commission Act, issued and subsequently served its complaint in this processing upon the respondents herein, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. There are two charges in the complaint: (1) that respondents have sold to the purchasing public sewing machines, the heads of which are manufactured in and imported from Japan, and that these sewing machine heads have been inadequately marked with the result that purchasers thereof have been deceived into believing that the machines were of domestic manufacture; and (2) that respondents by extensive advertising of very low priced sewing machines have secured the names and addresses of customers interested in the purchase of sewing machines, but that respondents, on demonstration of the advertised machines, have made no real

¹ As amended.

effort to sell the machines advertised, have disparaged them, and have attempted to sell, and did sell, different and more expensive machines.

In other words, that respondents have engaged in "bait advertising." After answer, various postponements and some testimony offered in support of the complaint, hearings were suspended for six months to enable counsel in support of the complaint to secure an amendment thereto from the Commission, broadening the complaint to include radio continuities and television broadcasts. Thereafter, hearings continued, and at the close of the evidence in support of the complaint, counsel for respondents moved to dismiss same, which motion was denied, and thereafter evidence offered by respondents was received and the case closed on August 16, 1954, and testimony and other evidence were duly filed in the office of the Commission. The proceeding now comes on for final consideration by the Hearing Examiner, theretofore duly designated by the Commission, on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel. The Hearing Examiner has duly considered such record and finds that this proceeding is in the interest of the public and finds the facts as follows:

1. Respondents William R. Pearsall, Francis Colucci and Aaron Silverman are, and for four years last past have been, co-partners, doing business under the name of Bond Sewing Stores, with their office and principal place of business located at 41—20 Queens Boulevard, Sunnyside, Long Island, New York. As such, they were engaged in the retail sale of both domestic and imported sewing machines and have a number of branches in the states of New Jersey, Pennsylvania, Maryland, Georgia and Florida for that purpose, with a gross annual volume of 1½ million, 50 percent of which was sold in New York State through their various retail stores located therein. Respondents do not import machines, but buy them from those who do.

2. In the conduct of their business, respondents cause, and have caused, their said sewing machines and accessories thereto, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other states of the United States. They maintain, and throughout their partnership existence have maintained, a course of trade in said products in commerce among and between the various states of the United States, which course of trade was, and has been, substantial.

3. There is no evidence that respondents have at any time sold sewing machine heads imported from Japan without any marking of the place of origin whatsoever, but they have admittedly bought and

resold to the purchasing public, sewing machine heads imported from Japan marked in letters of gold decalcomania on the black enamel of the machine head placed on the rear of the vertical arm. These sewing machine heads are all designed for electrical operation, and when a motor is attached thereto, at the only place on the head to which it could be attached, namely on the rear of the vertical arm, this decalcomania marking showing the place of origin of the machine head is effectively concealed from even careful inspection, short of removing the motor or of turning the machine to a very awkward and unusual position from the ordinary user's standpoint. This action would eventuate only from the desire to see that particular spot, but is entirely unlikely to ensue from ordinary and normal use of the machine, since the user faces the front of the vertical arm with the sewing mechanism to her left. There is substantial evidence in the record that purchaser-users are never shown this concealed marking and never suspect the foreign origin of their purchase until it is called to their attention long after purchase and use by someone familiar with these imported machine heads. The finding is that such marking is, for all practical purposes and to the ordinary user or purchaser, completely and effectively concealed.

4. Other sewing machine heads imported from Japan and purchased by respondents for resale had on the front of the vertical arm, in some instances, a gold metal plaque, hexagonal, oval or round in shape, about $1\frac{1}{2}$ inches, vertically and 1 inch horizontally in gold or brass finish bearing the legend "Deluxe" in raised $\frac{1}{4}$ inch letters and below that "Deluxe Family Sewing Machine" in raised letters approximately $\frac{1}{8}$ inch in length, and below that the word "Japan" approximately $\frac{1}{16}$ inch in length.

5. Others of these imported machine heads, sold by respondents, have a similar gold metal plaque riveted to the front of the vertical arm, but bearing the name "Royal" in the center thereof in raised letters approximately $\frac{3}{16}$ inch in height, above which in smaller raised letters appears "1953 Series," and below which, in still smaller raised letters about $\frac{1}{16}$ inch in height, appear "Made in Japan." Still others have the same plaques in size and color, but bearing the word "Simplex" instead of "Royal," the words "Washington, D. C." instead of "1953 Series," and the words "Made in Japan" in the same relative position as the "Royal" plaque above-described, the legends being of the same relative size and shape.

6. All of these medallions are in bright gold color, in small raised letters only of the same color, with no background coloring to emphasize the raised letters so that the words "Japan" or "Made in

Japan" are not distinct and are difficult to read at a distance greater than one foot or so, unemphasized and distinguishable only by careful inspection. There is substantial evidence in the record that users and purchasers either did not see, or seeing did not comprehend, such marking.

7. Other machines imported from Japan and purchased by respondents for resale were marked with a small gun metal plaque approximately $\frac{3}{8}$ inch in height and a 1 inch to $1\frac{1}{2}$ inch in width at the foot of the front of vertical arm, bearing the legend "Made in Occupied Japan." The gun metal coloring of this plaque, attached by rivets as it is, to the black japanned finish of the machine head, leaves it unemphasized and difficult to read the letters themselves at a distance of more than a foot or so. There is also substantial evidence in the record that users and purchasers either did not see this legend, or if they saw it did not make out the lettering thereon.

8. When these markings are taken with the additional facts that the motors attached to these machine heads all bore the legend "Made in U.S." or "Made in the United States" marked on the top of such motor which labels are plain and conspicuous when the machine is viewed from above and that respondents' circulars and its extensive advertising in newspapers, by radio and by television, nowhere mentions the place of manufacture of the machine, or the fact that it was imported, and that these machines were all branded with American names, such as "Margaret," "Bond," "Royal" and "Simplex," it is plain that many purchasers would be, and as the record shows, were in fact, deceived into the belief that respondents' sewing machines were made in the United States.

9. Not all, but a substantial portion of the purchasing public has a decided preference for products of domestic manufacture over those of foreign make, particularly machinery of any kind, and when sewing machines are advertised, exhibited, and offered for sale to the purchasing public and such articles are inadequately marked to show their foreign origin, or if marked and the markings are concealed, such purchasing public understands and believes such articles to be wholly of domestic origin. A representative number of purchasers from respondents so testified.

10. The finding, accordingly, is that respondents' imported sewing machines and sewing machine heads are not adequately marked to show the place of manufacture and origin, that a number of purchasers from respondents bought them in the erroneous and mistaken belief that they were made in the United States and that they would not have purchased such machines if they had known that they were imported from Japan.

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11. One purchaser from respondents testified that she informed respondent Pearsall, when she came in to inquire in response to respondents' advertising, that she wanted an American-made product and respondent Pearsall assured her that the machine that she purchased was not imported. This assertion was denied by respondent Pearsall. Since the complaint does not charge active and positive misrepresentation and deception, but only inadequate marking, the Hearing Examiner makes no finding on this conflicting evidence.

12. On the second charge in the complaint, that respondents advertised startlingly cheap merchandise, not for the purpose of sale, but with the intent, after names and addresses had thus been received, of selling much more expensive and therefore profitable merchandise, the record shows that respondents spent in excess of \$18,000.00 in one year in newspaper advertising at weekly intervals, and in excess of \$7,000.00 a year in television and radio advertising, all in the New York City sales area alone, confined according to the exhibits, to sewing machines offered at \$29.50, \$32.50 and \$39.50 with several attachments included in these prices, and at times, free gifts of various sorts also included. Demonstration was offered free within 90 miles, delivery free within 50 miles. It is seldom that a new sewing machine can be obtained for less than \$89.50 and upwards.

13. Examples of these advertisements follow:

2 DAYS ONLY
SALE PRICED NOW!
(Picturization of Portable
Electric Sewing Machine)

BRAND NEW 1951
ROUND BOBBIN
SEWING MACHINE
10 Year Part Guarantee
Full Size Electric Model
including Carrying Case
which can be used as an overnight bag

\$29.50
Full Cash
Price

SEWS EVERYTHING
Sews Over Pins Automatic Tension
Darns Monograms AC-DC Motor
Forward and Reverse Stitch
New Style Bobbin Winder
Complete—Nothing extra to buy

10 DAY HOME TRIAL

Try it at home for 10 days. If you are not pleased in every way, Bond refunds your deposit!

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BRAND NEW ROUND BOBBIN
DECORATOR CONSOLE
 SEWING MACHINE

DARNS, MONOGRAMS
 AND EMBROIDERS
 WITHOUT ATTACHMENTS!

(Picturization of Console
 Electric Sewing Machine)

32.50

Full Cash Price

1.25 Weekly

forward and reverse stitch

sews over pins

ac-dc motor

You get these

BOND EXTRAS:

6 FREE Attachments!

Darner, Mender and

Button-holder!

Pinking Shears!

Personal instruction!

20 YEAR PARTS GUARANTEE!

Write or phone for

FREE HOME DEMONSTRATION

BOND

Sewing Stores

MAIN SHOWROOMS

IN NEW YORK and vicinity

41-20 Queens Blvd.

L. I. C., N. Y.

Stores in New York Newark Philadelphia Baltimore

An example of a television continuity of respondents on these same
 sewing machines is as follows:

AUDIO

Allen Christopher presents Bond D Sewing Stores. Ladies, I guess all of you have dreamed of owning a beautiful modern portable electric sewing machine. Well, famous BOND SEWING STORE makes your dream come true at last . . because you don't have to pay \$200 for a good machine. You don't have to pay \$100 . . . you don't even have to pay \$50.

How would you like to get a *brand new* 1951 model ROUND BOBBIN SEWING MACHINE—Console Model—delivered to your door for the amazing low price of only \$39.50? You heard that didn't you? \$39.50 is not the down payment—\$39.50 is ALL you pay for this beautiful machine . . . a full-size electric model that's just rolled off the assembly line. It's not rebuilt. It's not re-conditioned. It's a brand new machine from top to bottom, including the brand new motor and it comes with a wonderful 10-year GUARANTEE on parts . . and only \$39.50 complete. That's the full cash price . . and you can have easy terms even at that low price.

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Ladies, you'll love this wonderful BRAND NEW 1951 ROUND BOBBIN Console Sewing Machine. This is not a chain stitch machine, it is a ROUND BOBBIN, Console machine.

You can lock stitch with it just as you do on machines costing \$200 and \$300. This machine is all-metal, with handsome chrome finish . . and watch now. I want to show you some of the special features.

You can do your regular forward stitching of course and then . . at the flip of this lever, just like in expensive machines, you can do your reverse stitching.

This magnificent new 1951 Console Model sewing machine can even sew right over pins * * * in fact you can adjust it so beautifully that if you wanted to, you would sew right over toothpicks. Ladies, you are watching a remarkable machine * * * a full-size electric portable machine * * * And it's yours for only \$39.50. The machine runs on both AC and DC current, so you can use it anywhere. And remember, there's a terrific 10-year guarantee on parts. Your guarantee of confidence and satisfaction * * * a full 10-year guarantee on parts. Ladies * * * when your beautiful new 1951 model machine arrives * * * see how you can start whipping up those new Fall and Winter drapes. Turn out school togs and Sunday best clothes for the kiddies. See how you'll save dollars and dollars turning last year's dresses into the very latest styles. Make hats, make doilies, and curtains for the house * * * anything you want. If you're not thrilled, you return the machine. There's no obligation, you owe nothing. The representative will simply thank you for letting him call. Folks, this is a special introductory offer—so here's something extra. When Bond delivers the machine to your door, your Bond representative will give you at no extra charge with machine—a hostess set of 6 glasses, 6 fruit dishes, stirrers and a wooden tray * * * at no additional charge * * * with your machine.

So there you are * * * the offer of a LIFETIME. First you get a brand new 1951 machine, NOT rebuilt, NOT reconditioned, but BRAND NEW and ready to serve you for years and years. It's guaranteed. You get the special carrying case, plus the wonderful pinking shears * * * all at no extra cost, because you get everything for that one full cash price—only \$39.50 complete * * * easy payment terms if you wish.

And folks, remember this. If you're not absolutely thrilled with the demonstration you are not obligated in any way. Bond's representative will merely thank you for allowing him to show you this amazing machine. You owe nothing. That's all there is to it. You simply cannot lose. I'm just sorry that we don't have enough machines for EVERY WOMAN who'll want one * * * so don't miss out. Call or write now.

14. It is true that the record shows that when anyone attracted by these advertisements came in, that the machine advertised was on hand in adequate supply, that it was shown and demonstrated, that if the potential customer called, the machine advertised was taken out to his or her home and demonstrated, that if the customer was insistent, the machine was sold and at the price advertised. Nevertheless, other facts in the record convince the Hearing Examiner that respondents had no intention of selling the machines advertised, but that the whole effort was a sales scheme, deliberately conceived and executed to obtain

thereby the names of people interested in purchasing sewing machines, (not otherwise easily identifiable) and then deliberately to high pressure them into buying sewing machines for between \$100.00 and \$200.00.

15. These facts are as follows: the machine advertised by respondents for \$29.50 cost respondents about \$24.00; the \$32.50 machine cost \$30.00; the \$39.50 machine cost \$28.00. In addition, there was a minimum salesmen's commission of \$2.00. Respondent Pearsall testified that most salesmen worked on commission *and* salary. He was very vague about travel allowances and was unable to say anything definite about overhead allocation. It is obvious, however, that the expensive advertising load, the expenses of running a \$1,500,000 annual business with many retail outlets in five or six states, the expenses of giving free demonstrations in a radius of 90 miles and free delivery within 50 miles must have more than consumed the \$3.50 margin on the \$29.50 machine, the 50¢ margin on the \$32.50 machine and substantially consumed the \$9.50 margin on the \$39.50 machine. In fact, respondent Pearsall admitted that respondents could not have remained in business selling these items alone.

16. Respondent Pearsall admitted in testimony that his salesmen "usually" carry along much more expensive sewing machines (those selling for \$100.00 upwards) with them when demonstrating these three machines described above. From the testimony of purchasers from respondents, this would appear to be an unvarying practice. Respondent Pearsall also admitted in testifying that "occasionally" his salesmen have disparaged the machines advertised, when demonstrating them to a customer who called in response to the advertising but that he always discharged them if witness heard of it. But the unanimous testimony of the consumer-purchasers was to the effect that this was a constant practice, that the salesmen were unable to make the machines, about which the customers called, work, or if they did, the customers were unable to do so, the salesmen explaining that the machines would jam unless the pressure on the foot pedals was just so much and no more; that the salesmen explained to the potential customer that she could not get parts for replacement, in spite of the fact that respondents advertised a 10-year guarantee on parts, and that the salesmen assured the prospects that if they wanted a good working machine which would give them good service the salesmen had just the thing out in their cars. The salesman would then get it, compare the two machines, and make every effort to sell the latter. This was natural inasmuch as his commission would then be 15 percent of the sales price of \$139.50 or \$179.50, as the case

might be. The prospect would then be further intrigued by that threadbare but still potent bait that she could have the machine at \$10.00 or \$15.00 off the price because the machine had a small scratch on the enamel, which scratch could seldom be found.

17. The offer to sell as advertised was not bona fide; the Hearing Examiner has no doubt from seeing and hearing these witnesses and the respondent Pearsall that respondents' salesmen—not just one, but several—actively and deliberately disparaged the machines advertised and had no intention of selling them unless it was a case of selling them or not selling anything at all. Respondent Pearsall admitted also the obvious, that respondents prefer to sell the much more expensive machines; that complaints have been made to respondents of their salesmen disparaging the machines advertised and of using high-pressure tactics to get prospects to purchase the more expensive machines. Coupled with the further facts that 80 percent of the sales were on calls, 20 percent in respondents' stores; that only 25 percent of the units sold by respondents, and only 8 to 10 percent of their sales volume, were in these cheap machines, and 75 percent of these cheap machines sold were returned, mostly for dissatisfaction and mostly as trade-ins on the more expensive machines; the picture to the Hearing Examiner is that of high-pressure advertising of a loss leader, certainly known by respondents, after several years of such experience, not to be a satisfactorily operable sewing machine to the majority of those responding to the advertising, with disparagement thereof, and insistent attempts to sell other and more profitable products.

18. Furthermore, respondents' advertising set out by sample in extenso in paragraph No. 13 above, directly represents, in the Hearing Examiner's opinion, to the typical housewife or other potential purchaser inexperienced in the construction, repair or use of a temperamental sewing machine first, that the machine advertised was operable by any reader and was in fact quite versatile in its sewing abilities, second, that parts being guaranteed for ten years, were easily replaceable if and when broken. These representations, on the record herein were deceptive and misleading, if not actually false. Potential customers were consistently told that part replacements were unobtainable, and actually shown by demonstration, that the machines advertised were either not operable at all, or operable only with great care—as a practical matter, unusable by the typical prospect for the purpose advertised.

19. Respondents are admittedly in competition with other persons, firms and corporations, but there is no substantial evidence in the

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record of the kind and extent of this competition nor any proof that respondents' acts and practices as hereinabove found have diverted, fairly or unfairly, substantial trade to them from their competitors or caused substantial injury to competition in commerce.

CONCLUSION

1. Respondents' acts and practices as hereinabove found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. The fact that during the pendency of this proceeding, respondents went into bankruptcy, either voluntary or at the instance of creditors, and that their assets are consequently in the custody of a trustee, is no bar to the issuance of the cease and desist order herein below issued. That corrective action in no way directly affects the ratable distribution of assets, but corrects only the commercial practices of respondents in selling or creating those assets.

3. Bankruptcy, of course, causes a cessation of the practices herein attacked, but only temporarily. This proceeding is not only against the partnership which is in bankruptcy, but is also against the individuals composing that partnership. Those individuals may alone, in a new partnership with each other, or in concert with others, engage in the same business and use the same practices herein found to be illegal. This is not the case of a corporation whose bankruptcy usually ends the corporate identity for all purposes.¹ There is nothing in this record to warrant the Hearing Examiner in believing that there will be no resumption. The practices herein found to be illegal are too commercially attractive, insidious, smooth and profitable not to encourage repetition, absent anything to indicate they will not. Bankruptcy is but a temporary suspension at best.

ORDER

It is ordered, That the respondents William R. Pearsall, Francis Colucci and Aaron Silverman, individually and as copartners, doing business as Bond Sewing Stores or under any other name, 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 The Gálter Case, 186 F. 2d 810 is not in point. There corporations dissolved.

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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 the country of origin thereof, in such a manner that it cannot readily be hidden or obliterated.

2. Representing, directly or indirectly, that sewing machine parts are guaranteed for 10 years, or any other period of time, when such parts are in fact unobtainable.

3. Representing in any manner, a sewing machine as operable and as satisfactory for everyday usage by one without special knowledge or training, when in fact it is not operable at all, or when in fact it can be operated only with special precautions.

4. The use of any sales plan or procedure involving the use of deceptive or misleading statements or representations in advertising which are designed to obtain leads or prospects for the sale of other or different merchandise than that advertised.

Order dated January 24, 1955 denying, for failure to file within the 60-day period set by Commission's Rules of Practice, motion by counsel supporting the complaint requesting an extension of time within which to file brief on appeal from initial decision.

ORDER REJECTING MOTION FOR EXTENSION OF TIME

This matter coming on to be heard upon the motion filed on November 26, 1954, by counsel supporting the complaint requesting an extension of time within which to file brief on appeal from the initial decision; and

The Commission having determined, for reasons stated in the opinion accompanying this order, that such motion should not be entertained:

It is ordered, That the motion of counsel supporting the complaint be, and it hereby is, denied.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

Presented for our determination here is a motion filed on November 26, 1954, by counsel supporting the complaint requesting a thirty-day extension of time within which to file his brief on appeal from the initial decision. It is stated in support of the request that the failure to file appeal brief within the time prescribed under the Com-

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mission's Rules of Practice occurred through inadvertence incident to counsel's absence from Washington on other hearings, and no answer in opposition to such motion has been filed by the respondents. We have concluded, however, that under applicable provisions of those rules, the initial decision must be deemed to have become the decision of the Commission on November 23, 1954, and that the motion of November 26, 1954, accordingly should not be entertained.

In these connections, we note that the service card in the record attests receipt of service of the initial decision on behalf of counsel supporting the complaint under date of October 20, 1954, and service of the initial decision upon the parties was completed thereafter on October 23, 1954. Timely notice of intention to appeal pursuant to the requirements of subparagraph (a) of Rule XXIII, was filed by counsel supporting the complaint on October 29, 1954. Subparagraph (f) of Rule XXIII provides that an appeal brief shall be filed within thirty days from service of the initial decision. The brief on appeal, accordingly, was due to be filed on or before November 19, 1954, such date being thirty days after service upon appellant of the initial decision.

A companion rule, Rule XXII of the Commission's Rules of Practice, provides that the initial decision shall become the decision of the Commission thirty days from service thereof upon the parties unless prior thereto (1) an appeal is filed under the provisions of Rule XXIII, (2) the Commission, by order, stays the effective date of the decision, or (3) the Commission, upon its own initiative, issues an order placing the case on its own docket for review. Although Rule XXIII provides that any party who has duly filed notice of intention to appeal may appeal from an initial decision, neither of these rules, however, contemplates that fulfillment of the requirement for timely notice constitutes the filing of the appeal itself.

Neither contingency (2) nor contingency (3) mentioned above ever occurred. As of November 19, 1954, no brief on appeal had been filed and no motion in lieu thereof requesting an extension of time for good cause shown had been submitted, as permitted under Rule XI. The operation of Rule XXII, accordingly, was not stayed and the initial decision of the hearing examiner must be deemed to have become the decision of the Commission on November 23, 1954, which date represents the thirty-first day after service of the initial decision upon the parties. In these circumstances, therefore, the motion should not be entertained and our order which is separately issuing here provides for its denial.

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ORDER OF THE COMMISSION

The hearing examiner having filed his initial decision herein and counsel supporting the complaint having seasonably filed a notice of his intention to appeal from said initial decision, but no appeal brief having been filed within the time provided by the Commission's Rules of Practice:

Now therefore, pursuant to Rules XXII and XXIII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner did automatically, on November 23, 1954, become the decision of the Commission.

It is ordered. That the 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.

Complaint

IN THE MATTER OF
MALCOLM E. SMITH, JR., ET AL.
DOING BUSINESS AS LOAMIUM COMPANY OF AMERICA

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

Docket 6180. Complaint, Oct. 27, 1953—Decision, Nov. 23, 1954

Consent order requiring a partnership in Harrison, N. J., to stop claiming that their chemical products "Kem-Kut" would produce an even lawn, make lawn mowing unnecessary, make grass greener, thicker, and more luxurious, was safe, and would not adversely affect the appearance of a lawn.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Mr. Harry T. Davimos, of Newark, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Malcolm E. Smith, Jr., Casper Pinsker, Jr., and Richard H. Davimos, individuals and copartners doing business as Loamium Company of America, hereinafter referred to as respondents, have violated the provisions of said Act, 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. Respondents Malcolm E. Smith, Jr., Casper Pinsker, Jr. and Richard H. Davimos are individuals and copartners doing business as Loamium Company of America, with their office and principal place of business located at 2 Kingsland Avenue, Harrison, New Jersey.

PAR. 2. Since February 1953, respondents have been engaged selling a product designated Kem-Kut and chemically known as maleic hydrazide, a preparation represented as effective in controlling the growth of lawn grass. Respondents' cause said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial