

Complaint

51 F. T. C.

IN THE MATTER OF
MERCURY MACHINE IMPORTING CORPORATION ET AL.

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

Docket 6011. Complaint, July 18, 1952—Decision, Jan. 4, 1955

Consent order requiring an importer of sewing machine heads from Japan and its corporate sales agent, with headquarters in New York City, to cease offering and selling such heads and completed sewing machines of which they were a part, without conspicuous disclosure on the heads of the country of origin, and to cease representing falsely that they were the manufacturers of the merchandise they sold.¹

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

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

Mr. Isaac Anolic, of New York City, 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 Mercury Machine Importing Corporation, a corporation, and Emil Deligtisch and Philip S. Morse, individually and as officers of said corporation, and Morse Sewing Machine and Supply Corporation, a corporation, and Philip S. Morse and Marian Morse, individually and as officers of said corporation, 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. Respondent Mercury Machine Importing 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 50 West 27th Street, New York, New York. Respondents Emil Deligtisch and Philip S. Morse are President and Treasurer, respectively, of this corporate respondent, and, acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent, Mercury Machine Importing Corporation.

¹ The issue as to the use of the word "Mercury," charged in the complaint, was adjudicated in *Pickow Distributing Corp. et al.*, D. 5890, March 10, 1954, 50 F. T. C. 783, in which the Commission found that it was not sustained by the evidence.

Respondent Morse Sewing Machine and Supply 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 40-42 West 27th Street, New York, New York, and acts as the sales agent for respondent Mercury Machine Importing Corporation. Respondent Philip S. Morse and Marian Morse are President and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent Morse Sewing Machine and Supply Corporation.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondent Mercury Machine Importing Corporation, a corporation, is now and has been for several years last past, engaged in the distribution of sewing machine heads imported from Japan to respondent Morse Sewing Machine and Supply Corporation.

Respondent Morse Sewing Machine and Supply Corporation is now, and has been for several years last past, engaged in the sale and distribution of sewing machine heads imported from Japan and complete sewing machines, of which said heads are a part, to distributors and also to retailers who, in turn, sell the aforesaid complete sewing machines to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their places of business in the State of New York to the purchasers thereof located in various other States of the United 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. 4. When the sewing machine heads are received by respondents, the word "Japan" appears on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head, in the process of which the aforesaid word is covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Furthermore, said

medallion can be readily removed and when the medallion is so removed, no visible mark of origin appears on the machine.

Respondents place no other mark on their imported sewing machine heads or complete sewing machines, of which said heads are a part, showing foreign origin, or otherwise inform the public that the heads are of foreign origin, before they are offered for sale to the public.

PAR. 5. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing 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.

There is among the 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, including sewing machines.

PAR. 6. Respondents used the word "Mercury" and other well known domestic names as trade or brand names for their sewing machine heads and complete sewing machines, which words are printed or embossed on the front horizontal arm of the head in large, conspicuous letters and use said trade names in their advertising matter. The word "Mercury," and the other prominent domestic names, are the names or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using a trade or brand name such as "Mercury" and other prominent domestic names, respondents represent, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the word "Mercury" and other prominent domestic names. The use of said trade names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. Respondents, in their advertising, make the following statements:

WHOLESALEERS

MANUFACTURERS

EXPORTERS

By and through the use of the word "manufacturers," respondents represent, directly or by implication, that they manufacture the products sold by them. In truth and in fact, respondents do not own or control a factory or facilities in which their products are manufactured. Substantial numbers of distributors and dealers prefer to deal with concerns which manufacture the products sold by them.

PAR. 10. Respondent Mercury Machine Importing Corporation, by supplying the afore-described imported sewing machine heads to respondent Morse Sewing Machine and Supply Corporation, who, in turn, sells the said heads and complete sewing machines, of which the said heads are a part, to dealers, jointly provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the manufacturer thereof.

PAR. 11. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines as well as the sellers of imported sewing machines, some of whom adequately inform the public as to the source of origin of their product.

PAR. 12. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot be readily removed, hidden or obliterated, that they are manufactured in Japan and also the use of trade or brand names, such as "Mercury" and other prominent domestic names, have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by the well and favorably known firm or firms with which said trade or brand name has long been associated and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been and is unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury 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.

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 January 4, 1955, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that Mercury Machine Importing Corporation, a New York corporation; Emil Deligtisch and Philip S. Morse, individually and as officers of said corporation; Morse Sewing Machine and Supply Corporation, a New York corporation, and Philip S. Morse and Marian Morse, individually and as officers of said corporation, all named as respondents, have violated the provisions of the Federal Trade Commission Act in connection with the selling and distribution in interstate commerce of sewing machines and sewing machine heads, in three respects:

1. Said sewing machines and sewing machine heads, although of foreign make and foreign origin, are not marked so as to disclose clearly that fact;

2. In using the word "Mercury" or other similar name as part of the trade or brand name for said sewing machines or sewing machine heads, respondents have represented directly or by implication that their products have been manufactured by well-known American firms with which such name or names have long been associated; and

3. By the use of the term "manufacturers" in their advertising matter, respondents have represented, contrary to fact, that they own or control the factory in which their products are produced.

Hearings upon these issues were held, but, after the close of the taking of testimony and before the closing of the record and issuance of an initial decision, a stipulation for a consent order was entered into by respondents with counsel in support of the complaint. This stipulation provides, among other things, that respondents admit all the jurisdictional allegations of the complaint; that the stipulation, together with the complaint, shall constitute the entire record in this proceeding; that the order hereinafter set forth may be entered in the disposition of this proceeding, and shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon; that the complaint may be used in construing the terms of the order, which may be altered, modified, or

set aside in the manner provided by the statute; and that the answer heretofore filed be withdrawn.

The stipulation provides that further hearings before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, as well as all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission, are waived, including specifically any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation. It is also agreed that the signing of the stipulation is for settlement purposes only, and does not constitute an admission that respondents have violated the law as alleged in the complaint.

The issues raised by the complaint in this proceeding are similar or identical with the issues raised in numerous other proceedings, and the stipulated consent order conforms to the orders heretofore issued in such other proceedings. This is particularly true as regards the issue as to the use of the word "Mercury" in conjunction with the sale and distribution of foreign-made sewing machines and sewing machine heads, which was adjudicated in the Pickow Distributing Corporation proceeding, Docket No. 5890. Hence, the fact that evidence has been presented in this case does not militate against the acceptance of the stipulation.

Accordingly, this proceeding is found to be in the public interest; the stipulation is accepted; the answer of the respondents is withdrawn; the evidence heretofore taken is disregarded; and the order as contained in the stipulation is issued, as follows:

It is ordered, That respondents Mercury Machine Importing Corporation, a corporation, and Emil Deligtisch and Philip S. Morse, individually and as officers of said corporation, and Morse Sewing Machine and Supply Corporation, a corporation, and Philip S. Morse and Marian Morse, individually and as officers of said corporation, 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 the

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

2. Representing, through the use of the word "manufacture" or "manufacturer" or any other word of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate or directly and absolutely control a manufacturing plant wherein said products are manufactured by them.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Mercury Machine Importing Corporation, a corporation, and Emil Deligtisch and Philip S. Morse, individually and as officers of said corporation, and Morse Sewing Machine and Supply Corporation, a corporation, and Philip S. Morse and Marian Morse, individually and as officers of said corporation, 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 January 4, 1955].

Decision

IN THE MATTER OF
EASTMAN KODAK COMPANY

ORDER DISMISSING COMPLAINT

Docket 6040. Complaint, Sept. 8, 1952—Order, Jan. 6, 1955

Order adopting the initial decision of the hearing examiner dismissing, as within the exceptions of the McGuire Act, a complaint charging the leading concern in the photographic products industry in the United States, which operated its own 42 retail outlets in 24 States and the District of Columbia, with compelling some 75,000 independent retail stores to observe its fixed resale prices.

Mr. Fletcher G. Cohn, Mr. Paul H. LaRue and Mr. Lewis F. Depro for the Commission.

Nixon, Hargrave, Devans & Dey, of Rochester, N. Y., and *Donovan, Leisure, Newton & Irving*, of New York City, for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The Federal Trade Commission on September 8, 1952, issued a complaint charging respondent, Eastman Kodak Company, with having violated Section 5 of the Federal Trade Commission Act, as amended by the McGuire Act,¹ by entering into contracts and agreements with retail dealers whereby respondent fixes and maintains the resale prices of amateur photographic products manufactured by it. Specifically, it is charged that such contracts and agreements are illegal in that some of the retail stores which have signed such contracts are in competition with wholly owned and controlled retail outlets of the respondent in the sale of said products to the consuming public.

Thereafter, respondent filed its answer and a motion to dismiss the complaint which was denied by the hearing examiner, on the ground that he lacked jurisdiction to consider the motion.² Respondent then filed a similar motion with the Commission, based on two separate and distinct grounds; (1) that the complaint fails to state a cause of action, and (2) that the Commission lacks jurisdiction in that the complaint fails to include certain indispensable parties as respondents.

¹ Act of July 14, 1952, Public Law 542, 2d Congress, amending Section 5 (a) of the Federal Trade Commission Act.

² The Commission held that this motion was properly filed with the hearing examiner who did have jurisdiction and should have considered it; as a matter of expediency the Commission considered and ruled on the similar motion as hereinabove indicated.