

IN THE MATTER OF
ATLANTIC SEWING STORES, INC., ET AL.

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

Docket 6716. Complaint, Jan. 25, 1957—Decision, Aug. 12, 1957

Order requiring four affiliated concerns in Flushing, N.Y., and their three common officers who also did business under a variety of trade names, to cease, in advertising in newspapers and by television, using "bait" offers made for the purpose of obtaining leads to prospective buyers of sewing machines; to cease pricing fictitiously the models pushed and making deceptive "free gift" offers; and requiring the officers of the companies to cease using the word "Guild" in their trade names.

Mr. Kent P. Kratz for the Commission.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

In this proceeding, the complaint charged the corporate and individual respondents named in the caption hereof with violating the Federal Trade Commission Act (15 U.S.C.A. 45) by the use of so-called "bait" advertising in the sale of sewing machines. The complaint alleged that the individual respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth were officers of and directed the policies and activities of each respondent corporation. The complaint further alleged that the individual respondents also engaged in business as copartners under various trade names, including Household Sewing Guild, Consumers Credit Guild, Fiatelli Sewing Machine Company, Atlantic Sewing Stores, and Sew-Mart. The respondents filed an answer admitting that they were engaged in the sewing machine business, in commerce, that they "advertised," but denied the other material allegations set forth in the complaint.¹

The initial hearing convened at 10:00 o'clock A.M. on April 4, 1957, in New York City, as specified in the complaint. At the opening of the hearing, counsel supporting the complaint announced that he was ready to proceed with the hearing. No one appeared on behalf of any respondent. The examiner then announced a recess for a period of thirty minutes. During the recess, the examiner

¹ The answer was signed by each individual respondent but not by each respondent corporation. However, the hearing examiner has considered the answer as being filed on behalf of each respondent, corporate and individual.

was informed that a telephone call had been received from Mr. Seymour Exelberth, an officer of the respondent corporations and an individual respondent, stating that Mr. Exelberth was en route to the hearing room but had been delayed by traffic conditions caused by the heavy snowfall that morning. At approximately eleven o'clock A.M., Mr. Exelberth arrived at the hearing room and the hearing resumed. Mr. Exelberth requested postponement of the hearing for a period of thirty days. Mr. Exelberth stated that a postponement of the hearing for thirty days would give Mr. Exelberth an opportunity to obtain a job so as to earn money with which to pay an attorney toward his fee for representing Mr. Exelberth at the hearing in this proceeding. The examiner did not consider the reasons advanced by Mr. Exelberth sufficient to entitle him to a postponement of the hearing and his request was denied.

Counsel supporting the complaint then moved for judgment by default against the individual respondents Aaron Glubo and Robert B. Epstein. This motion was denied. The taking of testimony in support of the allegations in the complaint was begun and continued until the noon recess at approximately 12:45 o'clock P.M. Mr. Exelberth was present and actively participated in the proceedings at this session of the hearing. However, Mr. Exelberth did not appear at the afternoon session of the hearing which convened at two o'clock P.M., nor at any subsequent session of the hearing held on the following day, April 5, 1957.

At the opening of the afternoon session of the hearing which began at two o'clock P.M. on April 4, 1957, counsel supporting the complaint, noting the absence of Mr. Exelberth and the other individual and corporate respondents, then moved for a judgment by default against all respondents. The examiner denied this motion on the basis of Section 3.7(b) of the Rules of Practice which provides, among other things, that, to entitle complainant to a default judgment, respondent must fail to file an answer within thirty days after service of the complaint *and* (underscoring added) the respondent must also fail to appear at the hearing. In the present case, the record shows that the answer filed with the Secretary of the Commission on March 1, 1957, was signed by each individual respondent but not by each separate corporation as stated above. However, the first paragraph of the answer states: "The above-named corporations and persons answering the complaint of the Federal Trade Commission allege" etc. At the morning session of the hearing on April 4, 1957, Mr. Exelberth stated that he actually prepared the answer and it was filed on behalf of each corporate respondent as well as each individual respondent. Under

Findings

54 F.T.C.

such circumstances the examiner considered the answer as being filed on behalf of each corporate and individual respondent and, since each corporate and individual respondent filed an answer to the complaint, the respondents were not in default even though they did not appear at the hearing.

Proposed findings of fact, conclusion of law, and order have been filed by counsel supporting the complaint. None were submitted by respondents. Upon the basis of the entire record herein, the hearing examiner makes the following findings of fact, conclusion, and issues the following order:

FINDINGS OF FACT

1. The respondents, Atlantic Sewing Stores, Inc., Northern Appliance Stores, Inc., Para Specialties, Inc., and Appliance Buyers Corporation, corporations organized and doing business under the laws of the State of New York, with their office and principal place of business located at 144-17 Northern Boulevard, Flushing, New York, and the individual respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, are and have been engaged in the sale of sewing machines to the purchasing public. In the course of their said business, respondents have caused their sewing machines, when sold, to be transported from their place of business in the State of New York to purchasers located in other states of the United States, especially in New Jersey and Connecticut and have maintained a course of trade in said sewing machines in commerce among and between the States of New York, New Jersey, and Connecticut. Their volume of trade in said commerce has been substantial, amounting to approximately one and one-half million dollars during the year 1954. The individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, were and are president, treasurer, and secretary, respectively, of each of the respondent corporations, and they formulate and have formulated and directed the policies and activities of said corporations.

2. In addition to their activities as officers of said corporations, the individual respondents have also engaged in business as co-partners under various trade names, including Household Sewing Guild, Consumers Credit Guild, Fiatelli Sewing Machine Company, Atlantic Sewing Stores, and Sew-Mart. As a means of obtaining "leads" and prospects for the purchase of their sewing machines, respondents have advertised their sewing machines in New York City newspapers which have general circulation in New York City, New York, and the adjacent metropolitan area in the states of New Jersey and Connecticut. Respondents have also advertised their

sewing machines for sale on radio and television broadcasting stations located in New York City and New Jersey.

3. The following is a typical newspaper advertisement:

A SEWING COMBINATION!

1. Singer Sewing Machine Reconditioned by Northern
2. New Queen Ann Console
3. New Sewing Chair

(Picture of sewing machine and chair—all 3 pieces \$29.50)

Round Bobbin	Specials:
Darns, Monograms, Embroiders	New Portable
New AC-DC Motor	Orig. \$49.00 now \$23.50
Free Sewing Instructions	Assorted Reconditioned Consoles from
Free Buttonholer	\$29.50
	Vigorelli Portable orig. \$249.00 now
	\$219.00
	Fiatelli Console orig. \$289.50 now
	\$239.50

CALL NOW:

Manhattan	INdependence 3-8600	Queens	INdependence 3-8600
Suffolk Co.	IVanhoe 1-5555	Westchester	YOnkers 5-4175
New Jersey	Bigelow 8-1880	Connecticut	DAvis 3-1119
Bronx	INdependence 3-8600	North Jersey	Gregory 1-3020
Brooklyn	INdependence 3-8600	South Jersey	ELizabeth 3-3040
Nassau Co.	IVanhoe 1-5555	Staten Island	INdependence 3-8600

4. A typical television advertisement was as follows:

This \$5.00 size of Sheer Magic Perfume by Rembrant is yours absolutely free. You don't have to buy anything to get it. In just a moment I will tell you how you can get a bottle for yourself, but now another T.V. first.

THE HOUSEHOLD SEWING GUILD—TELEVISION'S FIRST SEWING MACHINE DISCOUNT HOUSE offers you the world's renowned Vigorelli, selling nationally at \$249.00—now reduced to \$219.50. The amazing Fiatelli—regular list price \$289.50—now \$239.50; and the world famous Free-Arm FRIDOR, which normally sells for \$289.00—the Household Sewing Guild Discount House price is \$199.50. Thanks to the Household Sewing Guild's tremendous buying power they have been able to cut the price down on famous brands, so that now everybody can afford to own a sewing machine.

Here is another example of how the Household Sewing Guild Discount House saves you money. Here is a complete three-piece sewing outfit, which includes a beautiful Queen Ann console of your choice of finishes—a top grade sewing chair with its own big storage compartment, and brand new 1955 model electric round bobbin sewing machine, featuring the exclusive Magic Stitcher, which performs many different sewing operations without additional attachments.

Here is another terrific feature of this 1955 model. It is convertible; it is a console, as you can see it here, and the portable—it is a lightweight, yet sturdy portable, ready to go anywhere, any time you want it to go, in this beautiful hand-rubbed portable carrying case, that incidentally doubles as the perfect overnight bag.

Take this machine wherever you go; sew with it in any room; the console makes a beautiful piece of extra furniture in your home; and the full and complete price of this complete three-piece outfit, is just \$29.50.

Findings

54 F.T.C.

You can pay it out on easy terms; \$5.00 down, \$1.00 per week. For your protection, the Guild gives you a five-year parts guaranty. Seeing is believing. I would like you to see this machine in your own home. Sew on it. Give it every test. If you want it, it is yours, complete for \$29.50. If you don't like it, it costs you nothing.

If you are among the first 100 to call now and decide to get the machine—after you see it you will receive as our bonus gift, this beautiful sewing kit, plus a pair of pinking shears. If you don't want the machine, you still get the Sheer Magic Perfume.

Call now—in New Jersey—Bigelow 2-6300.

In the five Boros of New York, and upstate New York, In. 3-8600; and in Long Island, Ivanhoe 1-5555; and in Connecticut, Stamford 3-1119; or write to MAGIC STITCHER, WATV, Newark 1, New Jersey, but for fast action, call now—(telephone numbers repeated).

5. Most of the persons answering the advertisements were interested in purchasing rebuilt sewing machines at the advertised price of \$29.50. Upon receipt of such an inquiry, it was respondents' practice to dispatch a "lead" man to call on the prospect at his or her residence. Most of the persons answering respondents' advertisements were women. The "lead" man would call at the prospect's home and accept a \$5.00 deposit from the customer as a down payment on the \$29.50 machine and give the person a receipt therefor. The machine was to be delivered later. Several days or weeks later a "closer" or BF man would call at the customer's residence ostensibly to deliver the \$29.50 sewing machine. However, the "closer" or BF man would disparage and criticize the \$29.50 machine during the demonstration thereof. Invariably, the machine had been previously "rigged,"² causing the thread to break on each movement of the needle during the demonstration.

6. The "closer" or BF man would then attempt to induce and did induce most customers to purchase a different or more expensive sewing machine, usually a Fiatelli or Vigorelli, manufactured in Japan. However, the "closer" or BF man would not tell the prospect the country of origin nor did the customer inquire. The public witnesses who testified at the hearing were not concerned with the country of origin of the machines. The "closer" or BF man would tell the prospect that the regular price was \$289.50 but was reduced to \$239.50. If the prospect had a trade-in, she would receive credit for an additional \$40.00, thus reducing the price to \$199.00. The "closer" or BF man did not have a set price at which he would sell the more expensive Fiatelli or Vigorelli machines but sold them at the highest price he could obtain from the particular customer, pro-

² The "rigging" was accomplished by attaching a metal cross-piece to the bobbin in such a position as to cause it to wiggle in and out, thus breaking the thread each time the machine was operated.

vided the selling price was not below \$79.00 for the portable and \$109.00 for the console. Before selling the machine at a supposedly "reduced" price, some of the "closers" or BF men would telephone the office of respondents to obtain "permission" to make the sale at a "reduced" price. In the presence of the customer or within hearing, the "closer" or BF man would telephone the office and ask for Mr. "Hold," a code which was the signal for the person in respondents' office who had answered the telephone to press a button on the telephone which would disconnect the call, leaving the "closer" or BF man talking into a dead line, unknown to the prospect. The "closer" or BF man would then continue his "conversation" until he obtained "permission" from the office to sell the machine at the "reduced" price.

7. By and through the use of the aforementioned statements in their advertising, the respondents represented directly or by implication that they were making a bona fide offer to sell reconditioned sewing machines for \$29.50; and that any person requesting a free home demonstration or 30-day free trial, or purchasing a sewing machine would receive a free gift of a sewing basket, pinking shears, or encyclopedia; and that the usual and customary selling price of a Fiatelli Console was \$289.50 and the portable \$199.50; and that the usual and customary selling price of the Vigorelli Portable was \$249.00. However, said representations were false, misleading and deceptive. The offers to sell reconditioned electric sewing machines for \$29.50 were not genuine nor bona fide offers but were made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. Furthermore, respondents did not deliver the free gifts as advertised. The prices of \$289.50 for the Fiatelli Console and \$199.50 for the portable were fictitious and greatly in excess of the prices at which said products were usually and customarily sold at retail. The advertised price of \$249.00 for the Vigorelli Portable was also in excess of the price at which said machine usually and customarily sold at retail.

8. The individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, through the use of the word "guild" as a part of the name under which they have traded, such as Household Sewing Guild and Consumers Credit Guild, have represented that their businesses conducted under such names are associations or guilds of consumers having common interests and aims and formed for mutual aid and protection. In truth and in fact, the Household Sewing Guild and Consumers Credit Guild are not associations or guilds but are partnerships conducted for private profit, to wit, the sale of sewing machines. The use by respondents of the foregoing

Order

54 F.T.C.

false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true.

9. Among the allegations in the complaint is an allegation that the respondents, through the use of the words "Vigorelli" and "Fiatelli" as brand names for sewing machines in their advertisements, have thereby represented that said machines were manufactured in Italy. A preponderance of the reliable, probative, and substantial evidence introduced at the hearing does not support such allegation. Therefore, it is found that such allegations have not been established.

CONCLUSION

All of the acts and practices found herein to have been indulged in by respondents were, and are, to the prejudice and injury of the public and to respondents' competitors and constituted, and now 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 respondents Atlantic Sewing Stores, Inc., a corporation, Northern Appliance Stores, Inc., a corporation, Para Specialties, Inc., a corporation, Appliance Buyers Corporation, a corporation, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, officers of the above-named corporations, and individually or as co-partners trading under any name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines or related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That certain sewing machines or other related products are offered for sale when such offer is not a bona fide offer to sell such sewing machines or other related products.

2. That certain amounts are the usual and regular retail prices of their sewing machines or other related products when such amounts are in excess of the prices at which such sewing machines or other related products are usually and regularly sold at retail.

3. That any article of merchandise or anything else of value is given free to anyone unless such merchandise or other thing of value is actually tendered or delivered.

It is further ordered, That respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, their agents, representatives and employees in connection with the offering for sale, sale, or distribution of sewing machines or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "guild" as a part of a trade or corporate name or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The date on which the hearing examiner's initial decision herein otherwise would have become the decision of the Commission having been extended by order issued July 18, 1957, until further order of the Commission; and

The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the corporate respondents, Atlantic Sewing Stores, Inc., Northern Appliance Stores, Inc., Para Specialties, and Appliance Buyers Corporation, and the individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, 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 contained in said initial decision.

IN THE MATTER OF

JOEL S. WORKMAN TRADING AS
JOEL WORKMAN COMPANY

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

Docket 6776. Complaint, Apr. 16, 1957—Decision, Aug. 14, 1957

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

Mr. S. F. House for the Commission.

Mr. Joel S. Workman, of New York, N.Y., *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on April 16, 1957, issued its complaint herein under the Federal Trade Commission Act, and the Fur Products Labeling Act against the above-named respondent Joel S. Workman, an individual trading as Joel Workman Company. The complaint charges respondent with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. The respondent was duly served with process. By letter dated May 7, 1957, treated as an answer by the Commission, respondent admitted the allegations of the complaint and asked for consent settlement. Therefore, pursuant to Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the hearing examiner by order dated June 19, 1957, canceled the initial hearing as set forth in the "Notice" portion of the complaint. Respondent having requested, in substance, by letter dated June 4, 1957, leave to withdraw his said letter of May 7, 1957, Commission's counsel being agreeable thereto, and for good cause shown, it is ordered that said letter so treated as an answer be considered as withdrawn and the "Agreement Containing Consent Order To Cease And Desist," hereinafter referred to, together with the complaint, shall constitute the entire record herein for the purposes of this initial decision.

On June 27, 1957, there was filed with the hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between the said respondent Joel S. Workman and S. F. House, counsel supporting the complaint, under date of