

Decision

IN THE MATTER OF
UNIVERSAL SEWING SERVICE, INC., ET AL.

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

Docket 6844. Complaint, July 22, 1957—Decision, Nov. 26, 1957

Order requiring sellers in Cincinnati to cease using "bait" advertising and other false claims in newspapers, radio and television broadcasts, and statements of salesmen, to sell sewing machines and vacuum cleaners, including representations of unconditional guarantees, representations that installment notes would not be sold to a finance company, and representations that the instrument signed by prospective customers was a "receipt" for products left on approval when it was actually a blank contract of sale; and to cease using the name "Westinghouse" for sewing machines which were manufactured in Japan.

Edward F. Downs, Esq. and Thomas A. Sterner, Esq., supporting the complaint.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On July 22, 1957 the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that copies of said complaint were duly served on said respondents together with copies of an order designating and appointing James A. Purcell as hearing examiner in this proceeding. The complaint so served contained a notice that a hearing would be held in Cincinnati, Ohio on September 25, 1957 on the charges set forth in said complaint, at which time respondents would have the right to appear and show cause why an order should not be entered requiring each of them to cease and desist from violations of the law charged in the complaint. The complaint further contained a notice that respondents were afforded an opportunity to file with the Commission an answer to the complaint on or before 30 days after service.

The record shows further that no answer to the complaint was filed within the time prescribed, that after the time for filing answer had expired hearing examiner Purcell issued an order on September 11, 1957 noting the default in the matter of filing answer, cancelling the hearing set for Cincinnati, Ohio on September 25, 1957 and in lieu thereof scheduling a hearing in Room 692, Federal Trade Commission Building, Washington, D.C. on October 3, 1957 at 10:00 A.M., which order was duly served on respondents.

Findings

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On October 2, 1957, by authority of the Commission, the Director of Hearing Examiners issued an order designating and appointing the undersigned, a hearing examiner of this Commission, to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law in the place and stead of James A. Purcell, hearing examiner heretofore appointed.

On October 3, 1957 pursuant to the order of hearing examiner Purcell a hearing was held at 10:00 A.M. in Room 692, Federal Trade Commission Building, Washington, D.C. At that hearing counsel supporting the complaint was present but neither of respondents were present in person or by counsel. Attention of the hearing examiner was called to the fact and it was noted on the record that no answer was filed by or for either respondent.

Following Section 3.7(b) of the Commission's Rules of Practice, the respondents, Universal Sewing Service, Inc., a corporation, and Raymond Anderson, individually and as an officer of the corporate respondent, having failed to answer the complaint within the time provided therefor and having failed to appear either in person or by attorney at the time and place fixed for hearing, after due notice thereof, were deemed to be in default and it was so stated on the record by the hearing examiner at the hearing. Also at said hearing consideration was given to determination of the form of order to be entered herein. In view of the foregoing the hearing examiner now makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Universal Sewing Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 600 Reading Road, Cincinnati, Ohio.

Respondent Raymond Anderson is an individual and an officer of corporate respondent Universal Sewing Service, Inc. He formulated, directed and controlled the policies, acts and practices of said corporate respondent. His address is the same as that of corporate respondent.

PAR. 2. Respondents at the time of issuance of the complaint and for some time prior thereto were engaged in the sale of sewing machines and vacuum cleaners.

PAR. 3. Respondents, in the course and conduct of their business, were engaged in substantial competition in commerce with other corporations, and with firms and individuals who are likewise engaged in the sale of sewing machines and vacuum cleaners, in commerce.

PAR. 4. In the course and conduct of their business, respondents caused their said products, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other states of the United States and have maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce was and has been substantial.

Respondents further engaged in commerce, in that they transmitted various instruments of a commercial nature to their customers and to financial or banking institutions located in states other than the State of Ohio.

PAR. 5. By means of advertisements inserted in newspapers of general circulation, commercial announcements by radio and television broadcasts which carry across state lines, in circulars and by oral statements made by their salesmen during the solicitation of sales of their products, respondents have falsely represented, directly or by implication:

(1) That offers to sell their products at low prices are bona fide offers to sell the products advertised at such prices, when in truth and in fact, such offers are not made in good faith but constitute "bait" advertisements the purpose of which is to obtain leads and information as to persons interested in purchasing such products. When prospective purchasers responded to said advertisements, respondents' salesmen called upon them and made no effort to sell the product so advertised but instead disparaged such products in a manner calculated to discourage the purchase thereof and attempted to, and frequently did, sell similar products at much higher prices.

(2) That their products were unconditionally guaranteed for five (5) or twenty (20) years, when actually such guarantees were limited in coverage and the limitations thereof were not disclosed in the advertisements or to purchasers, until after the sale and delivery of the products purchased.

(3) That sales contracts or notes to be paid off in installments would be retained by respondents and not sold by them to a finance or other company. Notwithstanding such assurances to purchasers respondents have sold their contracts and notes to finance or other companies with the result that they purchasers of respondents' products have been compelled to pay financing or carrying charges that they did not expect to have to pay.

(4) That the instrument signed by prospective purchasers, with whom respondents' products were left on a trial or approval basis, was a "receipt" for same, when, in fact, such instrument was actually a blank contract of sale or note that respondents subsequently completed and they or their assignees sought to enforce.

Order

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PAR. 6. Respondents used the name "Westinghouse" in connection with certain of their sewing machines, thereby representing, directly or by implication, that said sewing machines were domestically manufactured by the well known firm with which the name "Westinghouse" has long been associated, when, in truth and in fact, such sewing machines were not made by said firm but were, in fact, manufactured in Japan.

PAR. 7. The use by respondents of the aforementioned false, misleading and deceptive statements, acts and practices has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and into the purchase of substantial quantities of the aforesaid products, including higher priced products than those advertised, because of such mistaken and erroneous belief. As a result thereof, trade in commerce has been unfairly diverted to the respondents from their competitors and injury has thereby been done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices as hereinabove set out were all to the injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein. The complaint states a cause of action against respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That the respondents Universal Sewing Service, Inc., a corporation, and its officers, and Raymond Anderson, individually and as an officer 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 vacuum cleaners or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

2. Representing, directly or by implication, that their sewing machines, vacuum cleaners, or other merchandise is guaranteed for five (5) or twenty (20) years, or for any period of time, or that they are otherwise guaranteed, without clearly and conspicuously disclosing the existence of any material limitations upon the nature and extent of such guarantee or the manner of performance thereof, and the identity of the guarantor.

3. Selling or negotiating any contract or other instrument evidencing an installment sale after having represented directly or by implication to the person or persons executing such contract or other instrument that it would not be sold or negotiated.

4. Obtaining signatures on sales contracts or notes upon the representation, directly or by implication, that they are receipts or any instrument other than a contract or note, or attempting to collect from persons who have signed instruments so misrepresented.

5. Using the word "Westinghouse," or any simulation thereof, to designate, describe or refer to their sewing machines, vacuum cleaners or other products; or representing, through the use of any other words, or in any other manner, that said products are made by anyone other than the actual manufacturer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 26th day of November, 1957, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
BETTER LIVING, INC., ET AL.

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

Docket 6290. Complaint, Jan. 25, 1955—Decision, Nov. 29, 1957

Order requiring Philadelphia operators of retail stores in Pennsylvania, New York, New Jersey, and Maryland, to cease using bait advertising in the sale of their aluminum storm doors, aluminum storm windows, and aluminum awnings, and to cease making false representations in advertising and trade literature concerning prices and terms of sale, guarantees, durability of their products, prizes purportedly awarded in competitive contests, and fuel savings resulting from installation.

Mr. Daniel J. Murphy for the Commission.

Mr. Robert John Brecker, Mr. Isadore A. Shrager and Mr. Sidney Ginsberg, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

On January 25, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with dissemination of false advertisements to promote sales of aluminum storm doors, windows and awnings in commerce, in violation of the Federal Trade Commission Act.

THE ANSWER

On March 15, 1955, Respondents submitted an answer to the complaint herein, denying the principal charges thereof.

HEARINGS AND PROPOSED FINDINGS

Hearings were held in Washington, D.C. and Philadelphia, Pennsylvania, at which evidence was presented in support of and in opposition to the allegations of the complaint. Thereafter, counsel submitted proposed findings as to the facts and proposed conclusions, whereupon the proceeding came before the Hearing Examiner for his consideration of the entire record and issuance of an initial decision based thereon.