

ATLAS SEWING CENTERS, INC., ET AL.

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

Docket 7697. Complaint, Dec. 21, 1959—Decision, Oct. 27, 1960

Consent order requiring a large sewing machine and vacuum cleaner chain, with headquarters in Miami, Fla., transacting business through 36 subsidiary corporations which operated some 50 retail stores in 22 States, to

cease using bait advertising, fictitious pricing, and deceptive contests to obtain leads to prospective purchasers, and to cease claiming that repossessed or traded-in sewing machines and vacuum cleaners were new and that merchandise was guaranteed.

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 Atlas Sewing Centers, Inc., a corporation, and Herbert Kern, Theodore O. Kaplen and Charlotte L. Blackburn, individually and as officers of said corporation, and Leo Kern, individually and as Chairman of the Board of Directors 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, Atlas Sewing Centers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7630 Biscayne Boulevard, Miami, Florida. Corporate respondent Atlas Sewing Centers, Inc., transacts its said business through 36 subsidiary corporations which operate approximately 50 retail stores in 22 states and the District of Columbia.

Respondents Herbert Kern, Theodore O. Kaplen and Charlotte L. Blackburn are officers of the corporate respondent. Respondent Leo Kern is Chairman of the Board of Directors of said corporation. These individual respondents formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

Respondent Herbert Kern is located at 320 S. Hibiscus Drive, Miami Beach, Florida. Respondent Theodore O. Kaplen is located at 1506 Main Street, Houston, Texas. Respondent Charlotte L. Blackburn is located at 108 Daniels Street, Wilson, North Carolina. Respondent Leo Kern is located at 3912 Roseneath Drive, Houston, Texas.

PAR. 2. Respondents are now, and for a number of years last past have been, engaged in the advertising, sale and distribution of new and used sewing machines and vacuum cleaners to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents purchase said products from sources in the States of New York, Connecticut, Florida, and other locations, and have said products

shipped across state lines directly to their various retail stores. Payments for purchases of said products are made from the main office at Miami, Florida, except that the Houston, Texas, office maintains the records regarding purchases for the stores located in the midwest and western parts of the United States. In addition, used sewing machines and vacuum cleaners, including trade-ins on new machines or those which have been repossessed, are shipped from one store to another store across state lines.

In a large percentage of the sales of said products credit is extended. In such cases, a conditional sales contract is used, which sets out the amount and time of future payments, and after being signed by the purchasers, is forwarded to Atlas Sewing Centers, Inc., at its office in Miami, Florida, or Houston, Texas, depending on the section of the country in which the transaction occurs. Thereafter, so-called "verification letters" are mailed to each purchaser from the office in Miami or Houston as soon as either office has been notified of the sale to that customer and the credit department has made all the necessary computations and filled out all the appropriate records. In addition to the "verification letter," another letter is sent enclosing the payment booklet and advising the purchaser where the payments are to be made. There is a constant flow of payments to respondents' offices in Miami and Houston through their retail stores from the purchasers of both new and used machines located in the several states and the District of Columbia.

Respondents have further engaged in extensive commercial intercourse in commerce with their various retail stores, consisting of the transmission and receipt of letters, checks, reports, contracts, accounting and inventory forms and other documents of commercial nature, and various forms of advertising matter sent to their retail stores which is used by the retail stores in the conduct of their business, all in connection with the sale of respondents' products.

PAR. 4. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their products, have made certain statements and representations with respect thereto in advertisements inserted in newspapers, magazines, radio and television, direct mail advertising and through other advertising medias. By and through the use of such statements and representations, and others of similar import but not specifically set forth herein, and through oral statements made by their salesmen, respondents have represented, directly or by implication:

(a) That they are making a bona fide offer to sell new and used sewing machines, ranging in price from approximately \$12.50 to \$29.50, and new and used vacuum cleaners, ranging in price from approximately \$9.95 to \$14.95;

(b) That they are conducting a bona fide contest, the winners of which are to receive a sewing machine or vacuum cleaner and other prizes, including gift certificates;

(c) That the usual and regular retail selling prices of their Atlas sewing machine, Cinderella sewing machine, and Atlas vacuum cleaner are \$199.50, \$69.50 and \$169.95, respectively;

(d) That certain of their products (which have been used) are new and unused;

(e) That certain of their products were guaranteed in every respect for life or for a specified number of years.

PAR. 5. The aforesaid representations are false, misleading and deceptive. In truth and in fact:

(a) The offers to sell new and used sewing machines and vacuum cleaners for the low prices set forth in subparagraph (a) of Paragraph Four above were not genuine or bona fide offers but were made for the purpose of obtaining leads to persons interested in purchasing said products. After obtaining such leads, respondents, or their salesmen, called upon such persons at their homes, or waited upon them at respondents' place of business. At such times and places, respondents and their salesmen would disparage the advertised product and would instead attempt to sell and did sell different and more expensive sewing machines or vacuum cleaners;

(b) Respondents did not conduct a bona fide contest. Such contest was a scheme to obtain leads. Almost everyone entering the contest won a gift certificate entitling them to a discount on the purchase of a sewing machine or vacuum cleaner. These certificates were valueless as the holders of such were charged the usual and regular price by the respondents for any sewing machine or vacuum cleaner they may have purchased. In fact, in many instances the salesman calling would notify such persons that they had "won" a sewing machine or vacuum cleaner in order to gain entry but would subsequently notify them that they had merely won a discount off the purchase price of a "Cinderella" or another inexpensive machine, or an Atlas machine.

(c) The prices set forth in subparagraph (c) of Paragraph Four above were fictitious and in excess of the usual and regular retail prices of said products;

(d) Certain of the products represented as being new were in fact used machines having the appearance of being new and when represented to be new, or in the absence of a disclosure that they are used, are readily accepted by the public as being new and unused. This is particularly true, when, as frequently occurs, the prices of the used machines are the same, or approximately the same, as new machines of the same kind. There is a preference on the part of the

public for new machines over used machines, particularly when the price is the same, or approximately the same.

(e) Respondents' guarantee is not unconditional. It is limited in certain respects and these limitations are not disclosed in the advertisement or to the purchaser.

PAR. 6. In the conduct of their business, at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the 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.

Mr. Michael J. Vitale for the Commission.

Arnall, Golden & Gregory, by *Mr. Ellis Arnall*, of Atlanta, Ga., and *Dawson, Griffin, Pickens & Riddell*, by *Mr. Donald Dawson*, of Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 21, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On September 8, 1960, there was submitted to the Undersigned 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 respondents and counsel supporting the complaint, as well as counsel for respondents, under date of September 2, 1960, subject to the approval

of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Atlas Sewing Centers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7630 Biscayne Boulevard, Miami, Florida.

Respondent Herbert Kern is an officer of the corporate respondent and is located at 320 S. Hibiscus Drive, Miami Beach, Florida. Respondent Theodore O. Kaplen is an officer of the corporate respondent and is located at 3308 McGregor Drive, Houston, Texas, and not as set forth in the complaint. Respondent Charlotte L. Blackburn is an officer of said corporation and is located at 2506 Dorrington Street, Houston, Texas, and not as set forth in the complaint. Respondent Leo Kern is Chairman of the Board of Directors of said corporation and is located at 3912 Roseneath Drive, Houston, Texas.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents.

When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

It is ordered, That respondent Atlas Sewing Centers, Inc., a corporation, and its officers, and respondents Herbert Kern, Theodore O. Kaplen and Charlotte L. Blackburn, individually and as officers of said corporation, and Leo Kern, individually and as Chairman of the Board of Directors 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 and vacuum cleaners, 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 said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. That awards or prizes are of a certain value or worth, unless in using such awards or prizes the recipients thereof are benefited by, or save the amount of, the stated value or worth of such prizes or awards;
3. That any price is respondents' usual and regular retail price of said merchandise when it is in excess of the price at which said merchandise is usually and customarily sold at retail in their normal course of business;
4. That sewing machines and vacuum cleaners which are trade-ins or have been repossessed are new, or otherwise failing to clearly reveal that sewing machines and vacuum cleaners which are trade-ins

974

Complaint

or have been repossessed are trade-ins or repossessed, as the case may be;

5. That said merchandise sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 shall, on the 27th day of October 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named 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.