

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

A. C. WEBER & COMPANY, INC., ET AL.

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

Docket 8425. Complaint, June 7, 1961—Decision, Feb. 14, 1962

Consent order requiring Chicago distributors of "Pfaff" sewing machines to cease representing falsely, in advertisements and advertising mats distributed to dealers for their use, that excessive amounts were the usual retail prices of their products and that the sewing machines were guaranteed for life or unconditionally; and to cease placing in the hands of their dealers,

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circulars describing a sales plan involving bait advertising which represented falsely that they were making a bona fide offer to sell a low-priced machine not intended to be sold at the advertised price but described as "an excellent tool to enable you to 'step-up' your customer to the [higher-priced] model".

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 A. C. Weber & Company, Inc., a corporation, Albert C. Weber, individually and as an officer of said corporation, and Frank Dolven, individually and as Sales Manager 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. A. C. Weber & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 216 North Canal Street, in the city of Chicago, State of Illinois.

Respondent Albert C. Weber is President and respondent Frank Dolven is Sales Manager of said corporation, and their address is the same as that of the corporate respondent. These individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent, including those hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines to dealers. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their products, have produced and distributed to their dealers various advertisements and advertising mats to be used by said dealers in advertising and offering respondents' products to the public. Respondents have participated in the publication of such advertisements through sharing the

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cost of the publishing of said advertisements in newspapers and otherwise. Among and typical, but not all inclusive, of the representations caused to be published are the following:

A Fabulous PFAFF \$88
Valued at \$176

A Fabulous PFAFF \$139
Valued at \$219

A Fabulous PFAFF
\$98
Valued at \$176

½ Price Sale
Only 6 days left
A Fabulous PFAFF \$98
Valued at \$176

Reg \$289 this week \$149 includes cabinet

Reg \$99. This week only \$68 Save \$31

Reg \$124.95 Save \$25 \$99.95

Reg. \$379 No. 230 PFAFF } all three for only
Reg \$26.90 Iron and Board } \$299

With usual Pfaff Guarantee

Lifetime Guaranteed

Lifetime Guarantee

PAR. 4. Through the use of the statements and representations set forth hereinabove, respondents and their dealers have represented that:

1. The prices set forth in connection with the word "Valued" were the prices at which the sewing machines advertised were customarily and usually sold in the trade area or areas where the representations were made, and that the differences between such prices and the lower sales prices represented savings from said trade area prices.

2. The prices set forth in connection with the term "Reg" were the prices at which the dealers publishing the advertisements had sold the advertised machines in the recent regular course of business, and that the differences between said prices and the lower sales prices were savings from said dealers' usual and customary prices.

3. Their sewing machines are guaranteed for life, or are unconditionally or completely guaranteed.

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

1. The prices set forth in connection with the word "Valued" were in excess of the prices at which the sewing machines advertised were

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usually and customarily sold in the trade area or areas where the representations were made and the differences between such prices and the lower sales prices did not represent savings from trade area prices.

2. The prices set forth in connection with the term "Reg" were in excess of the prices at which the dealers publishing the advertisements had sold the advertised sewing machines in the recent regular course of business and the differences between such prices and the lower advertised prices did not represent savings from said dealers' usual and customary prices.

3. Respondents' machines are not guaranteed for life but, on the contrary, many of the essential parts of said machines are guaranteed for only one year, and the guarantee is subject to other limitations not disclosed in the advertisements in which such guarantee representations were made.

PAR. 6. Respondents have also engaged in unfair and deceptive practices, in commerce, through the use of a sales promotion plan which placed in the hands of their dealers the means of engaging in bait advertising. In connection therewith, respondents caused to be distributed to dealers of their sewing machines a form letter or circular stating as follows:

TO: ALL PFAFF DEALERS SERVICED BY THE CHICAGO OFFICE,
A. C. WEBER & CO., INC.

SUBJECT: PFAFF #139 ZIG-ZAG MACHINE FOR CHRISTMAS PROMOTION AND NEW PRODUCTS.

GENTLEMEN:

We call your attention to the below-listed new products:

1. *Pfaff Model #139 for Christmas promotion:*

We have secured a limited number of this low-priced, three position, manual zig-zag machine just for 1960 Christmas promotion. This model is to be used strictly as a "leader" and quantity is limited to *two* (2) units per dealer. This model *will not* be available after January 1st, 1961.

Here's The Good News:

YOUR COST—\$99.00 in Complete Portable

Step-Up To Higher Priced Models

The #139 is an excellent tool to enable you to "step-up" your customer to the model #259, #260A, * * *

Remember—anybody can sell this machine to a customer, so "nail it to the floor" and get the 260A and 360A sale.

We repeat, we *will not guarantee delivery* of over *two* #139 units to a dealer, so govern yourself accordingly.

How To Advertise The #139

Enclosed are two proof sheets of mats now available to promote this machine. Take your choice of how you wish to advertise it—in a base, in a complete portable, in a #105 cabinet, or in a #405 desk.

* * * * *

The advertising mats furnished dealers in connection with this promotion stated as follows:

(Dealer's name to be inserted) Breaks All Price Barriers 1961 Pfaff Zig Zags Automatically for the next 7 days only at this price
\$000

With a Lifetime Guarantee

and

Mr. Dealer this is a 4-way ad. Take your choice of any of the following variations (1) Advertise with portable base only at \$139 (2) Advertise with portable case at \$159 (3) Advertise with console at \$179 (4) Advertise with desk at \$199

Through the use of this plan respondents placed in the hands of their dealers the means and instrumentalities whereby their dealers could, and did, represent that they were making a bona fide offer to sell the # 139 sewing machine at the advertised price and that there was a sufficient number of said machines on hand to meet the reasonable, anticipated demand.

PAR. 7. Said representations were false, misleading and deceptive. In truth and in fact, under said plan it was not intended that the dealers would sell the advertised machines at the advertised price, or any other price, but rather that they should refrain from selling the advertised machines and sell higher priced machines to persons who responded to said advertisement. Only two of the advertised machines were made available to dealers by respondents, which number under ordinary circumstances was insufficient to meet the reasonable, anticipated demand.

PAR. 8. Respondents' said acts and practices, as hereinabove set forth, serve to place in the hands of dealers means and instrumentalities whereby such dealers may mislead the public as to the usual and customary prices of respondents' sewing machines, the nature and extent of the guarantee of such machines, and the availability of certain specially priced machines.

PAR. 9. 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 such 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.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute,

unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said 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, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent A. C. Weber & Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 216 North Canal Street, in the city of Chicago, State of Illinois.

Respondent Albert C. Weber is an individual and an officer of said corporation, and respondent Frank Dolven is an individual and Sales Manager of said corporation. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent A. C. Weber & Company, Inc., a corporation, and its officers, and respondents Albert C. Weber, individually and as an officer of said corporation, and Frank Dolven, individually and as Sales Manager 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sewing machines and accessories, or any other product or products, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Any amount is the customary and usual retail price of merchandise in a trade area or areas when it is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Any savings are afforded in the purchase of merchandise from the price at which said merchandise is usually and customarily sold at retail in a trade area or areas where such representations are made, unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by respondents' dealers in such trade area or areas.

3. Any amount is respondents' dealers' usual and customary price of merchandise when it is in excess of the price at which said merchandise is usually and customarily sold by said dealers in the recent regular course of their business.

4. Any savings are afforded in the purchase of merchandise from respondents' dealers' usual and customary price, unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold by said dealers in the recent regular course of their business.

5. Any product is guaranteed unless the terms and conditions of the guarantee and the manner in which the guarantor will perform are clearly set forth.

B. Using the word "value" to describe or refer to the price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold at retail in the trade area or areas where the representation is made.

C. Using the word "Reg" or "Regular" to describe or refer to the price of merchandise when such amount is not the price at which said merchandise has been usually and customarily sold by respondents or their dealers in the recent regular course of business.

D. Misrepresenting in any manner the amount of savings available to the purchasers of respondents' merchandise; or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents or their dealers in the normal course of their business.

E(1) Placing in the hands of retailers or others any sales program or means of offering merchandise for sale when such offer is not a bona fide offer to sell the merchandise so offered.

(2) Representing in any manner that merchandise is being offered for sale when such offer is not a bona fide offer to sell the merchandise.

It is further ordered, That the respondents herein shall, within sixty

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(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 this order.

IN THE MATTER OF

SWISS LABORATORY INC., ET AL.

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

Docket C-77. Complaint, Feb. 14, 1962—Decision, Feb. 14, 1962

Consent order requiring Cleveland, Ohio, distributors of plastic metal menders designated "Black Magic" and "Black Jack" to jobbers for resale to autobody repair shops and automotive supply chains, to cease representing falsely in advertisements in magazines, in form letters and on labels, and otherwise, that the substances used in their metal menders were non-toxic and would not cause itching, that their said "Black Magic" metal mender was endorsed by a shop nurse, and that their said "Black Jack" product was a solder; and requiring them to label their products with warnings of dangers attendant on use thereof.

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 Swiss Laboratory Inc., a corporation, and Leon W. Diamond, individually and as an officer 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 Swiss Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1533 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondent Leon W. Diamond is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, plastic metal menders designated "Black Magic"

and "Black Jack" to jobbers for resale to autobody repair shops and automotive supply chains.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their plastic metal menders designated "Black Magic" and "Black Jack", respondents have made certain statements and representations in advertisements in magazines of national circulation, in form letters and on labels, and by other media, of which the following are typical:

SHOP NURSE SAYS:

Remember, with
BLACK MAGIC

you're sure
there are

* * *

NO ITCH.

NON-TOXIC

BLACK MAGIC with its
original Non-Toxic Cream
Hardener.

BLACK JACK Flexible
SOLDER with NON-Toxic
CREAM HARDENER

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented, directly or by implication:

(1) That the substances used in the putty and cream hardener composing the plastic metal menders are non-toxic and will not cause itching.

(2) That their plastic metal mender designated "Black Magic" is endorsed by a shop nurse.

(3) That the metal mender designated "Black Jack" is a solder.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

(1) The putty and cream hardener are not non-toxic and may cause itching or skin irritation as the putty contains cobalt naph-

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thenate and the cream hardener contains benzoyl peroxide, both of which are primary irritants and sensitizers to the skin.

(2) The plastic body mender has not been endorsed by any type of nurse.

(3) The metal mender designated "Black Jack" does not have the characteristics and effectiveness of a solder. Its effectiveness depends principally on its organic and non-metallic ingredients.

PAR. 7. The labels on the respondents' putty and cream hardener are misleading in that they fail to reveal facts material with respect to the consequences which may result from the use of said products as directed on the label for the putty and with respect to conditions of storage of the cream hardener. In truth and in fact, the cobalt napthenate contained in the putty and the benzoyl peroxide contained in the cream hardener may through prolonged or repeated contact with the skin irritate and sensitize the skin and, therefore, in case of contact should be flushed from the skin. Both the putty and cream hardener are toxic if taken internally and, therefore, should be kept out of reach of children. The benzoyl peroxide contained in the cream hardener may be flammable if coming in contact with heat or flame and this fact is not disclosed.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of plastic metal menders of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and failure to warn the purchasing public on the labels of the products of the dangers attendant to the use of the products have had, and now have, 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 that there is no danger in use of the products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a) (1) of the Federal Trade Commission Act.

Order

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Swiss Laboratory 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 1533 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondent Leon W. Diamond is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Swiss Laboratory Inc., a corporation, and its officers, and respondent Leon W. Diamond, 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 manufacturing, advertising and offering for sale, sale and distribution of plastic metal menders designated "Black Magic", and "Black Jack", or any other product or products of similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That such products are non-toxic or will not cause itching or skin irritation.

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(b) That the product designated "Black Magic" has been endorsed by a nurse or representing, contrary to fact, that said product has been endorsed or approved by any other person or organization.

2. Using the word "solder" to describe any product which is not a metallic compound or otherwise misrepresenting the composition of the product.

3. Failing to include on the label on the container for the putty the following statements:

CAUTION: Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water.

4. Failing to include on the label on the container for the cream hardener the following statements:

CAUTION: Keep away from heat or flame. Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commis-