

IN THE MATTER OF

HAROLD A. MOORE ALSO KNOWN AS HAL MOORE, ET
AL., TRADING AS MAYFAIR APPLIANCE, ETC.

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

Docket C-239. Complaint, Sept. 20, 1962—Decision, Sept. 20, 1962

Consent order requiring franchised dealers for Morse sewing machines in Spokane, Wash., to cease unfair practices they utilized under their "Morse Owner/Advertiser Program", including representations by their salesmen that they were employed by manufacturers of the sewing machines, were not salesmen but were merely seeking to induce favorable word-of-mouth advertising by witnesses of their demonstrations, that participants in their program would acquire a machine free or for only a down payment, could easily earn enough to offset installment payments by referring leads to dealers, etc.

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 Harold A. Moore, also known as Hal Moore, and Larry Moore, as individuals and as copartners trading as Mayfair Appliance and as Morse Advertising Associates, 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. Respondents Harold A. Moore, also known as Hal Moore, and Larry Moore are individuals and have been copartners trading and doing business as Mayfair Appliance and as Morse Advertising Associates, with their office and principal place of business located at 1925 Northwest Boulevard, in the city of Spokane, State of Washington. Respondent Harold A. Moore's present address is East 8009 Sprague Street, Spokane, Wash.

PAR. 2. Respondents for several years last past have been engaged in advertising, offering for sale, selling and distributing sewing machines and other products to the public.

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

PAR. 4. Respondents have been franchised dealers for the sale and distribution of Morse sewing machines and, in the course and conduct of their business, have utilized a so-called "Morse Owner/Advertiser Program" as a method of developing leads to prospective purchasers thereof and of inducing the sale of said sewing machines to members of the public.

PAR. 5. Under the aforesaid program a prospective purchaser, whose name has been referred to the franchised dealer by a purchaser-participant, is given a small sum of money, such as \$5.00, or other gift of similar value by the dealer or his salesman for permitting a demonstration of said sewing machine in the prospect's home. The prospect may participate in the program by purchasing a machine and, in turn, referring the names of friends and acquaintances whom he can induce to permit similar home demonstrations in their respective homes. The purchaser-participant is paid a stipulated amount, such as \$30.00, for each such lead who purchases one of said sewing machines from the dealer.

In the main, purchaser-participants obligate themselves to a conditional sales contract which provides for monthly payments over a period of time, such as two years, and they are entitled to refer leads to the dealer for a similar period of time. The installment obligations are treated as separate and distinct from such earnings as may accrue under the lead referral aspects of the program.

PAR. 6. In the course and conduct of their business, respondents and their salesmen have made certain representations, directly or indirectly, to prospective purchasers, of which the following are typical but not all inclusive:

(a) That they are representatives of, or are employed by, the manufacturer of said sewing machines.

(b) That they are not salesmen but are merely seeking to induce favorable word-of-mouth advertising by those members of the public to whom the machines are to be demonstrated.

(c) That they have a program under which participants will acquire a sewing machine free of cost; or for no cost in addition to a down payment.

(d) That they will sell a sewing machine to 10, or to 14, out of 24 (also expressed in various other terms such as 53%, or as 73%) of the leads referred to them from among the participants' friends or acquaintances.

(e) That by purchasing a machine a participant, by referring a minimum of one lead per month to respondents, will experience little or no difficulty in earning enough to offset his monthly installment payments and with additional leads can easily earn considerably in excess of his installment obligations during the terms thereof.

PAR. 7. In truth and in fact:

(a) Respondents, as franchised dealers, and their salesmen were neither representatives nor employees of the manufacturer of said sewing machines.

(b) Respondents and their salesmen were engaged in direct selling for the purpose of inducing the immediate purchase of such machines by persons to whom they were being demonstrated.

(c) Relatively few, if any purchaser-participants acquired their machines without making additional payments in substantial amounts therefor.

(d) Substantially fewer leads than represented resulted in completed sales.

(e) In the overwhelming majority of instances purchaser-participants did not offset their installment obligations by lead referral earnings. Furthermore, many of those whose lead referral earnings offset

some of their monthly payments did so only after expending considerably more time and effort thereat than was represented by respondents and their salesmen.

Therefore, the representations referred to in paragraph 6 were false, misleading and deceptive.

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 sewing machines or other products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 notified thereof and furnished 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 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. Respondents Harold A. Moore, also known as Hal Moore, and Larry Moore are individuals and have been copartners trading and

doing business as Mayfair Appliance and as Morse Advertising Associates, with their office and principal place of business located at 1925 Northwest Boulevard, in the city of Spokane, State of Washington. Respondent Harold A. Moore's present address is East 8009 Sprague Street, Spokane, Wash.

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 respondents Harold A. Moore, also known as Hal Moore, and Larry Moore, as individuals and as copartners trading as Mayfair Appliance, Morse Advertising Associates, or under any other trade name or names, 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 any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. They are representatives of, or are employed by, the manufacturer of such products; or misrepresenting in any other manner the identity, nature or status of their business.

2. They are engaged in an advertising program; are seeking favorable word-of-mouth advertising; or that they are not engaged in direct selling; or misrepresenting in any other manner their status as salesmen.

3. Any such product will be acquired free, or without cost other than a down payment; or misrepresenting in any other manner how, or the conditions under which, any such products may be acquired.

4. They have in the past, or may in the future, sell such products to 10 out of 24, 53%, or any other amount or proportion, however expressed, which is not in accord with the facts, of the leads referred to them; or misrepresenting in any other manner the frequency of sales to leads, or the probability of selling such products to persons whose names are to be referred or submitted by their customers.

5. Installment payments will be offset by referring one lead per month to respondents; or that such payments will easily or customarily be offset or exceeded by lead-referral earnings; or misrepresenting in any other manner the effort which will be necessary to achieve earnings by submitting names to respondents.



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