

Complaint

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IN THE MATTER OF
CENTRAL SEWING CENTER, INC., ET AL., DOING BUSINESS AS
TRI-STATE DISTRIBUTING

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

Docket 8556. Complaint, Mar. 5, 1963—Decision, Sept. 20, 1963

Order requiring Denver, Colo., sellers of sewing machines and vacuum cleaners to the public, to cease representing falsely in advertising and orally that their "bait" offers made to develop leads to prospects, were bona fide offers to give sewing machines free to specially selected persons; that an excessive amount set forth as "Retail Value" was the usual price and a stated lesser figure represented savings; that a customer preferring one of their regular line would be granted a substantial discount; that drawings for their products displayed at theaters or business establishments—actually schemes to obtain leads to prospective customers—were bona fide contests and that participants won valuable certificates entitling them to reductions from usual prices; and that their products and practices had been tested and approved by "Good Housekeeping" and "Parents Magazine".

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 Central Sewing Center, Inc., a corporation, and Leonard H. Dorey, individually and as an officer of said corporation, and said respondents collectively, doing business as Tri-State Distributing, 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 Central Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1417 South Broadway, in the city of Denver, State of Colorado.

Respondent Leonard H. Dorey is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation, including the acts and practices hereinafter set forth. His address is the same as that of the respondent corporation.

Respondents Central Sewing Center, Inc., and its officers, and Leonard H. Dorey, as an individual and as an officer of respondent

corporation, trade and do business collectively, under the name and style of Tri-State Distributing, at the principal office and place of business hereinabove set forth.

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 and vacuum cleaners to the public.

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 Colorado to purchasers thereof located in various other States of the United States, and maintain, 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. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in direct mail advertisements and through other advertising media, of which the following are typical:

Your name has been selected in your vicinity to receive a 1961 NEW HOME Sewing Machine during our advertising campaign. The Sewing machine will cost you absolutely nothing. All you must purchase is one of our moderately priced Cabinets for it. Cabinets are priced from \$29.50. TRI-STATE DISTRIBUTING is going to place a few of these fine NEW HOME machines throughout the state as part of our annual advertising budget * * * The retail value of the machine we are making available to you is \$119.50 * * *. Guaranteed and backed by New Home Sewing Machine Corp. * * *. (Depiction of a sewing machine and cabinet.)

PAR. 5. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That their offers were being made only to a limited number of specially selected persons.

2. That they were making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet.

3. Through the use of the aforesaid amount in connection with the words "Retail Value", that said amount was the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale, and through the use of said amount and the lesser amount for said machine and cabinet that the difference in said amounts repre-

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sented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in all of said trade areas.

4. Through the oral statements of respondents' said salesmen, that customers who elected to purchase one of their regular line of sewing machines rather than the aforementioned machines would be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines.

PAR. 6. In truth and in fact:

1. Respondents' said offers were not being made only to a limited number of specially selected persons. Said offers were made to numerous members of the general public through frequent mailings to broad segments thereof.

2. Respondents were not making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet. On the contrary, respondents' said offers were made for the purpose of developing leads as to prospective purchasers of respondents' products at greatly increased prices.

3. The amount set out in connection with the words "Retail Value" was not the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale and purchasers of respondents' said merchandise would not realize a saving of the difference between the said higher and lower price amounts.

4. Customers who elected to purchase one of respondents' regular line of sewing machines rather than the aforementioned machines would not be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines. Said discounts or allowances purportedly granted in lieu of said advertised machines or leaders are not based on the net prices, disregarding purported discounts, bonuses or allowances, at which said regular line sewing machines are usually and customarily sold by respondents in the normal course of their business.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have caused certain of their products to be displayed at theaters or business establishments for use as subjects of drawings or contests. Participants in said drawings received form letters from respondents

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which contained certain statements, of which the following are typical:

CONGRATULATIONS You have been given \$85 toward the purchase of any new sewing machine * * * or \$45 toward any new vacuum cleaner * * *.

Various insignia or emblems are also depicted on said form letters, including the following:

(Insigne) Replacement or refund of money GUARANTEED BY GOOD HOUSEKEEPING if not as advertised therein.

(Insigne) COMMENDED by the Consumer Service Bureau of PARENTS' Magazine as advertised therein.

PAR. 8. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That they conduct bona fide contests and that recipients of said form letters have won a valuable prize, through their participation therein, consisting of a certificate entitling them to a discount or bonus in the amounts stated, as reductions from the prices at which such products are usually and customarily sold by respondents.

2. That respondents' products and their advertising and practices have been tested or approved by "Good Housekeeping" or "Parents' Magazine", and that respondents were authorized to depict such insignia or emblems in their advertisements.

PAR. 9. In truth and in fact:

1. Respondents do not conduct bona fide contests. Said contests are schemes to obtain leads as to persons interested in purchasing respondents' products and almost everyone participating therein receives a discount or bonus certificate as an award or prize. Said recipients of said form letters have not won a valuable prize. Said certificates are valueless since the purported reductions in the various amounts stated therein are not from the net prices disregarding purported discounts, bonuses and allowances at which such products are usually and customarily sold by respondents in the normal course of their business.

2. Respondents' products, advertising, or practices have not been tested or approved by "Good Housekeeping" or "Parents' Magazine" and respondents are not authorized to depict their emblems or insignia in their advertisements.

Therefore, the statements and representations, as set forth in Paragraphs 7 and 8 hereof, were and are false, misleading, and deceptive.

PAR. 10. In the course and conduct of their business respondents have used such statements as "guaranteed" in their advertisements,

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thereby implying that their products were guaranteed in every respect and without qualification.

PAR. 11. In truth and in fact respondents' guarantee is not unconditional but is limited in certain respects which limitations were not disclosed in their advertisements. Furthermore, the proper identity of the guarantor is not disclosed in many of said advertisements.

Therefore, the statements and representations, as set forth in Paragraph 10 hereof, were and are false, misleading and deceptive.

PAR. 12. 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 those sold by respondents.

PAR. 13. 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.

PAR. 14. 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 of the Federal Trade Commission Act.

Mr. Terral A. Jordan and Mr. John J. McNally supporting the complaint.

No appearance filed for respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

MAY 17, 1963

The complaint herein, charging respondents with violation of Section 5 of the Federal Trade Commission Act by the making of false and misleading representations for the purpose of inducing the sale of merchandise, was issued March 5, 1963, and was duly served upon respondents by registered mail on March 18, 1963, and March 20, 1963. The respondents have not filed their answers to this complaint within the time required (nor did they appear at the time and place set for hearing) and are now in default. Pursuant to the provisions of Rule 4.5(2c) of the Commission's Rules of Practice for Adjudica-

tive Proceedings, and on complaint counsel's motion, the hearing examiner hereby declares the respondents in default and now finds the facts to be as alleged in the complaint, and issues his initial decision containing such findings, appropriate conclusions drawn therefrom and order to cease and desist, as follows:

FINDINGS OF FACT

1. Respondent Central Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1417 South Broadway, in the city of Denver, State of Colorado.

Respondent Leonard H. Dorey is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation, including the acts and practices hereinafter set forth. His address is the same as that of the respondent corporation.

Respondents Central Sewing Center, Inc., and its officers, and Leonard H. Dorey, as an individual and as an officer of respondent corporation, trade and do business collectively, under the name and style of Tri-State Distributing, at the principal office and place of business hereinabove set forth.

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 and vacuum cleaners to the public.

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 Colorado to purchasers thereof located in various other States of the United States, and maintain, 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.

4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in direct *mail advertisements* and through *other advertising media*, of which the following are typical:

Your name has been selected in your vicinity to receive a 1961 NEW HOME Sewing Machine during our advertising campaign. The sewing machine will cost you absolutely nothing. All you must purchase is one of our moderately priced Cabinets for it. Cabinets are priced from \$29.50. TRI-STATE DISTRIBUTING is going to place a few of these fine NEW HOME machines

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throughout the state as part of our annual advertising budget * * * The *retail value* of the machine we are making available to you is \$119.50 * * *. Guaranteed and backed by New Home Sewing Machine Corp. * * *. (Depiction of a sewing machine and cabinet.)

5. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That their offers were being made only to a limited number of specially selected persons.

2. That they were making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet.

3. Through the use of the aforesaid amount in connection with the words "*Retail Value*", that said amount was the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale, and through the use of said amount and the lesser amount for said machine and cabinet that the difference in said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in all of said trade areas.

4. Through the *oral statements* of respondents' said salesmen, that customers who elected to purchase one of their regular line of sewing machines rather than the aforementioned machines would be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines.

6. In truth and in fact:

1. Respondents' said *offers were not being made only to a limited number of specially selected persons*. Said offers were made to numerous members of the general public through frequent mailings to broad segments thereof.

2. Respondents were not making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet. On the contrary, respondents' said offers were made for the purpose of *developing leads* as to prospective purchasers of respondents' products at greatly increased prices.

3. The amount set out in connection with the words "*Retail Value*" was not the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale and purchasers of respondents' said

merchandise would not realize a saving of the difference between the said higher and lower price amounts.

4. Customers who elected to purchase one of respondents' *regular line of sewing machines* rather than the aforementioned machines would not be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines. Said discounts or allowances purportedly granted in lieu of said advertised machines or leaders are not based on the net prices, disregarding purported discounts, bonuses or allowances, at which said regular line sewing machines are usually and customarily sold by respondents in the normal course of their business.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof, were and are false, misleading and deceptive.

7. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have caused certain of their products to be displayed at theaters or business establishments for use as subjects of drawings or contests. Participants in said drawings received form letters from respondents which contained certain statements, of which the following are typical:

CONGRATULATIONS You have been given \$85 toward the purchase of any new sewing machine * * * or \$45 toward any new vacuum cleaner * * *.

Various insignia or emblems are also depicted on said form letters, including the following:

(Insigne) Replacement or refund of money GUARANTEED BY GOOD HOUSEKEEPING if not as advertised therein.

(Insigne) COMMENDED by the Consumer Service Bureau of PARENTS' MAGAZINE as advertised therein.

8. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That they conduct bona fide contests and that recipients of said form letters have won a valuable prize, through their participation therein, consisting of a certificate entitling them to a discount or bonus in the amounts stated, as reductions from the prices at which such products are usually and customarily sold by respondents.

2. That respondents' products and their advertising and practices have been tested or approved by "Good Housekeeping" or "Parents' Magazine", and that respondents were authorized to depict such insignia or emblems in their advertisements.

9. In truth and in fact:

1. Respondents do not conduct bona fide contests. Said contests are schemes to obtain leads as to persons interested in purchasing respondents' products and almost everyone participating therein received a discount or bonus certificate as an award or prize. Said recipients of said form letters have not won a valuable prize. Said certificates are valueless since the purported reductions in the various amounts stated therein are not from the net prices disregarding purported discounts, bonuses and allowances at which such products are usually and customarily sold by respondents in the normal course of their business.

2. Respondents' products, advertising, or practices have not been tested or approved by "Good Housekeeping" or "Parents' Magazine" and respondents are not authorized to depict their emblems or insignia in their advertisements.

Therefore, the statements and representations, as set forth in Paragraphs 7 and 8 hereof, were and are false, misleading, and deceptive.

10. In the course and conduct of their business respondents have used such statements as "guaranteed" in their advertisements, thereby implying that their products were guaranteed in every respect and without qualification.

11. In truth and in fact respondents' guarantee is not unconditional but is limited in certain respects which limitations were not disclosed in their advertisements. Furthermore, the proper identity of the guarantor is not disclosed in many of said advertisements.

Therefore, the statements and representations, as set forth in Paragraph 10 hereof, were and are false, misleading and deceptive.

12. 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 those sold by respondents.

13. 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.

CONCLUSION

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 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Central Sewing Center, Inc., a corporation, and its officers, and respondent Leonard H. Dorey, individually and as an officer of said corporation, and said respondents separately or collectively doing business as Tri-State Distributing, 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, vacuum cleaners or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, unless true, directly or by implication, that any offer to sell said products is being made only to a limited number of persons or to specially selected persons.

2. Representing, directly or by implication, that said products are offered for sale when such offer is not a bona fide offer to sell the merchandise so, and as, offered.

3. Using the words, "Retail Value", or words of similar import, to refer to any amount which is in excess of the price or prices at which such merchandise is usually and customarily sold in the trade area where the representation is made; or otherwise misrepresenting the usual and customary retail selling price or prices of such merchandise in the trade area.

4. Representing in any manner that, by purchasing any of their merchandise, customers are afforded savings amounting to the difference between respondents' stated selling price and any other price used for comparison with that selling price, unless the comparative price used represents the price at which the merchandise is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business.

5. Representing, directly or by implication, that contests to select the winners of prizes or awards are being conducted when all of such winners are not selected on the basis of a bona fide drawing or other competitive elimination.

6. Representing, directly or by implication, that awards or prizes are of a certain value or worth when the recipients thereof are not in fact benefited by or do not save the amount of stated value or worth of such prizes or awards.

7. Representing, unless true, directly or by implication, that "Good Housekeeping" or "Parents' Magazine" have authorized the use of any insignia or emblem by respondents, or have tested or approved respondents' products, advertising, or practices; or misrepresenting in any manner or by any means that respondents' products, advertising, or practices have been tested or approved by any organization or publication.

8. Representing, directly or by implication, that said products are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.

FINAL DECISION

This matter having come before the Commission on the exceptions of counsel supporting the complaint to the initial decision of the hearing examiner filed May 17, 1963; and

The Commission having determined that the exceptions of counsel supporting the complaint should be granted since the record does not warrant the inclusion of the phrase "unless true" in Paragraphs 1 and 7 of the order to cease and desist entered by the hearing examiner on May 17, 1963:

It is ordered, That the initial decision be modified by striking from Paragraphs 1 and 7 of the order to cease and desist the phrase "unless true".

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

It is further ordered, That 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 set forth herein.

IN THE MATTER OF

EDWARD B. GOTTHELF TRADING AS COMMODITY FUTURES
FORECAST