

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

Docket 8309. Complaint, Mar. 7, 1961—Decision, Dec. 3, 1964

Order denying respondent's exception to the recommendation after remand and its request that the complaint be dismissed—and making effective the original order to cease and desist of February 28, 1964, 64 F.T.C. 1079, stayed by order of June 3, 1964, which required a Seattle trade association of wholesale and retail bakers to cease fixing prices for bread.

OPINION AFTER REOPENING

DECEMBER 3, 1964

By DIXON, *Commissioner*:

On February 28, 1964, the Commission issued its decision and order in this matter, directing respondents to cease and desist fixing bread prices.¹ In finding that the unlawful acts and practices had occurred in interstate commerce, as required by Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the Commission took official notice of certain facts² concerning respondent Continental Baking Company's organization and business that had been developed in another and earlier proceeding before this agency, *In the Matter of Continental Baking Company*, Dkt. 7630 (1963) [63 F.T.C. 2071]. Thereafter, at the request of respondent Continental, the Commission remanded³ the instant proceeding to its hearing examiner for such further hearings as might be necessary to give Continental, in accordance with Section 7(d) of the Administrative Procedure Act, "an opportunity to show the contrary" of those facts officially noticed from the earlier record. Pursuant to that order of the Commission, hearings were held in Seattle, Washington, on July 20 and 21, 1964, and the record thereof was certified to the Commission on September 24, 1964, together with the hearing examiner's recommendation that the Commission affirm its earlier decision in the matter.

In its effort to "show the contrary" of the facts officially noticed by the Commission in its opinion of February 28, 1964, respondent Continental called eight (8) witnesses, including its regional manager from its regional office in San Francisco, California; its plant manager in Seattle; and six (6) of the Seattle plant manager's supervisory subordinates (*e.g.*, a sales manager, a route supervisor, etc.). Their testimony covered just over 200 pages.⁴ The Commission's attorney called no witnesses, but introduced, pursuant to a stipulation with opposing counsel, certain excerpts from the testimony of Continental's President, R. Newton Laughlin, before the Senate Subcommittee on Antitrust and Monopoly.

The substance of the facts noticed in our earlier opinion may be summarized as follows. Ultimate responsibility for the affairs of Continental Baking Company is centered in the company's headquarters in Rye,

¹ *In the Matter of Bakers of Washington, Inc.*, F.T.C. Dkt. 8309, reported in 3 CCH Trade Reg. Rep. Par. 16,843 (February 28, 1964) [64 F.T.C. 1079].

² *Id.*, Commission's opinion, pp. 15-20 [64 F.T.C. 1079, 1118-1123].

³ Opinion, reported in 3 CCH Trade Reg. Rep. Par. 16,915 (May 21, 1964).

⁴ Tr. 675-907.

New York. Its 29-State (and District of Columbia) bakery operation is divided into a number of "regions," each of which covers several states and is headed by a "regional manager" responsible to the home office for the successful operation of the individual baking plants located in his multi-state area. The individual bakery, headed by a "plant manager" responsible first to his "regional manager" (who is frequently located in another state) and ultimately to the home office in Rye, New York, sells the company's bread in an assigned territory through driver-salesmen who call on such local purchasers as grocery stores, restaurants, and so forth. At the three major "levels" of corporate responsibility—headquarters, region, and plant—that responsibility is vested in an executive (president, regional manager, plant manager), aided by a staff divided along functional lines (*e.g.*, personnel, engineering, production, purchasing, sales, and so forth).

The home office in New York was found to have exercised ultimate control over the territories assigned to the several regions and to the individual plants within those regions. It was also found that the home office in Rye, New York, does the purchasing for the company as a whole, buying and paying for raw materials for the individual baking plants from suppliers located in many States: that the home office, in the interest of maintaining a uniform standard of quality for its products (for example, "Wonder Bread"), prescribes production methods and standards through the issuance of "production bulletins" and regional supervision; that the home office in New York approves all price changes by the individual baking plants; that the home office collects from its individual baking plants all monies received by them for sales of Continental products, taking care of bakery expenses by sending money to them from New York, depositing it in "local" bank accounts for the use of the individual plants; that the home office prescribes an accounting system to be followed by the individual baking plants, requiring from them a detailed *weekly* report of production, sales profit and loss, and so forth, in addition to sending auditors to check their books twice a year or more, and regional cost analysts to evaluate the efficiency of their operation; that the home office in New York selects regional managers and, through them, managers and department heads of each of the local baking plants, frequently shifting managers from one plant and region to another; that the home office purchases all employee insurance; that the home office, through its regional officials, supervises the maintenance of the individual baking plants and the delivery trucks used by them; that the home office, through its own "labor relations man," supervises the negotiation of its bakeries' labor contracts; that the home office, through its own "art department," de-

signs most of the packages and wrappers in which its bakeries sell its products; and that the home office in Rye, New York, through its own "advertising department" there and a retained New York advertising agency, produces, places, and pays for virtually all of the company's advertising, including that placed in both national and local media, and supplies the bakeries themselves with "point-of-purchase" advertising materials to be placed in grocery stores.

These are the essentials of Continental's multi-State organization and operation as described by its headquarters, regional, and other officials in the earlier Commission proceeding referred to above. In their effort to "show the contrary" of those facts insofar as the Seattle bakery is concerned, respondents have now offered testimony that we think can be summarized as follows. The Seattle bread plant (together with the company's Seattle cake plant) is under the jurisdiction of a "regional office" located in San Francisco, California, as are similar plants located in the four States of California, Utah, Oregon, and Washington, a multi-State territory with a circumference of some 3,500 miles. The manager of that regional office has six department heads reporting to him: a regional production supervisor; a regional personnel director; a regional engineer; a regional vehicular supervisor; a regional cost analyst; and a regional sales manager.

The manager of the Seattle plant (who also manages the company's Seattle cake plant) reports to that regional manager in San Francisco. This Seattle plant manager, in turn, exercises his management control through several supervisory subordinates having responsibilities somewhat similar to those of their counterparts at the higher regional level, including a production superintendent; a chief engineer; a garage superintendent; a sanitation superintendent; and office manager; and four sales managers. The sales managers are in charge of 21 "route supervisors," who in turn supervise 12 "route salesmen." These salesmen sell and deliver bread baked in Continental's Seattle plant to some 3,500 Washington customers, including grocery stores, restaurants, and so forth, an average of just over five driver-salesmen for each route supervisor, and some 30 or more customers for each salesman. Both the route supervisors and the driver-salesmen reporting to them are paid a combination of a base salary plus a commission on sales. The bakery loads the delivery trucks overnight in accordance with the driver's instructions of the previous evening, the driver's request being based on his estimate of his needs for the next day's deliveries. He calls on each customer on his route (*e.g.*, grocery stores) at least once each day, returning to some of the larger stores several times during the day, replenishing the grocer's supply of bread, cleaning and straightening the loaves on the shelf space assigned to him by

the grocer, putting up (with the grocer's permission) signs and displays or "point-of-purchase" advertising materials, and otherwise trying to increase the sales of his product (for example, "Wonder Bread") by the store to consumers.

This testimony thus affirms the essentials of the Commission's noticed findings as to Continental's organizational structure and general operational methods.

In several particulars, however, the testimony offered here does attempt to "show the contrary" of a number of the facts previously noticed by the Commission. Thus, the manager of Continental's regional office in San Francisco testified that the Rye, New York, "labor relations man" does not participate in the negotiations of the Seattle plant's labor contracts; while the regional and home offices doubtless approve those contracts, initial negotiation is a function of the Seattle bakery officials. Further, the Seattle plant manager does not need regional or home office approval to hire and fire his "department heads" (sales managers, etc.).⁵ We accept these two corrections of our noticed findings.

His testimony in regard to a number of the other noticed facts is less persuasive, however. He claims that, whatever may be the practice of the company's other regional managers in other parts of the country, he exercises no control over the territory served by the Seattle bakery, its production methods, its sales, or its prices. As to the geographical limits of the Seattle plant's sales territory, he says he leaves this to the "terrain." He does not claim, however, that the Seattle plant manager could commence selling in any state it chose without regional or home office approval. And whether he, as regional manager, exercises any control over the production procedures and standards of the Seattle bakery is not particularly significant; the fact noticed here in our prior opinion is that the home office in Rye, New York, issues "production bulletins" prescribing uniform standards—and by this we understand minimum standards of quality for the company's major products, for example, "Wonder Bread"—while the regional production supervisor "is constantly in touch with the plants."⁶ This witness testified that he had on his staff an official called the "regional

⁵ This does not suggest, of course, that Continental's personnel policies are themselves a local matter. This Seattle plant manager, for example, was transferred there less than three years ago (February 1962), after more than four years in the company's regional office in San Francisco. And his present sales manager in Seattle has held that position for less than a year, having been transferred there from the position of production manager in the San Francisco plant.

⁶ Opinion of the Commission, p. 17 [64 F.T.C. 1079, 1120].

production supervisor," and did not deny that this official "is constantly in touch with the plants," including the Seattle plant.

In regard to the matters of sales and pricing in the Seattle area, this regional manager's testimony that he leaves these solely to the discretion of the Seattle plant manager is wholly unpersuasive.⁷ First, the suggestion that he has no responsibility for these activities in his region is flatly contrary to the testimony given in the earlier case by another of the company's regional managers, who said that his responsibilities were "to operate the business and the bakeries under my control and try to make some money * * *. I am responsible for pricing in the trading areas that I have charge of."⁸ Secondly, this regional manager's denial of responsibility for pricing and sales in his region appears inconsistent with the fact that he has on his San Francisco staff an official called the "regional sales manager," and is contradicted by the further fact that a former holder of that position testified, in this proceeding, that in the course of his duties in that "regional" job, "I * * * spent a great deal of time here in Seattle."⁹ Thirdly, this claim that the San Francisco regional office exercises no supervisory control over Seattle sales and pricing is at odds with testimony and documents previously admitted in this case. At the original hearing, the then-manager of the Seattle plant, a Mr. Kenneth D. Covington, testified that while he could "suggest"¹⁰ prices and price changes, they had to be "approved" by the regional office in San Francisco.¹¹ Continental's counsel summed up the testimony of that Seattle plant manager on this point by saying that "he writes a letter of recommendation to his regional manager and subsequently gets

⁷ It is not entirely clear from this regional manager's testimony that he really intended to deny his general, over-all responsibility to the home office in New York for sales, prices, and thus profits in the Seattle area. In response to his counsel's question as to "whether or not you regard your function as the regional manager to *operate* the businesses and the individual bakeries *yourself*," he answered, of course, in the negative. Tr. 724 (emphasis added). And he further testified:

Q. Are you responsible, Mr. Hooks, for the sales volume of each bakery or *is it more accurate to state that you are responsible for the sales volume of your region as a whole?*

A. No; each plant is responsible for his own sales volume as well as his profits. [Tr. 725-726 (emphasis added).]

The fact that this regional manager holds each of the individual plant managers in his region "responsible for his own sales volume as well as his profits" is in no way inconsistent with the finding that *he*, the regional manager, is in turn held responsible, by the home office in New York, for, as his attorney put it, "the sales volume of your region as a whole."

⁸ Opinion of the Commission, p. 18 [64 F.T.C. 1079, 1121].

⁹ Tr. 709.

¹⁰ Tr. 411, 426. He testified further:

Q. Did you also fill out a form, what Continental Baking Company calls a Form 487, in which you requested a price rise effective on September 22?

A. Yes, sir. [Tr. 448.]

¹¹ Tr. 427.

approval for a price change but * * * he did not mean to testify to, your Honor, that he was able to say what goes on internally in Rye, New York."¹²

A number of documents substantiated this, showing that, when the Seattle plant raised its prices in 1958, the manager of that plant sent a "recommendation" for the increase to his regional superior, the regional manager in San Francisco, who in turn submitted it to the home office in Rye, New York, for the personal approval of the company's president.¹³ Questioned about these documents, the then-manager of the Seattle plant testified that he had also followed this procedure in raising his prices in 1960.¹⁴ The following testimony seems to us conclusive:

Q. Now, I show that Exhibit 23E to the witness and I would like to ask the witness whether that indicates that the president of the company gave approval to the 1958 suggested price raise?

The WITNESS. Yes, it does.

Q. And may I ask you, did you receive approval from the president of the company for your suggested 1960 price rise?

A. I don't recall that I received approval direct from the president of our company. *Other than through our own regional office [in San Francisco].*¹⁵

In any event, however, the contention that the San Francisco regional office is a mere "service" unit exercising no executive control over the Seattle baking plant,¹⁶ even if accepted fully, would not warrant a finding that Continental's Seattle plant manager has unlimited pricing authority. Certainly there can be no doubt that, while he is permitted to initiate actions within certain limits of authority previously delegated to him by his superiors, and is allowed to "recommend" for their approval actions not within that area of his delegated discretion, he must, and does, account not just ultimately but *weekly* to the company's home office in Rye, New York. Here there

¹² Tr. 425.

¹³ CX 23A-D. See also CX 24-27, 29.

¹⁴ Tr. 423, 424.

¹⁵ Tr. 426-427 (emphasis added). This Seattle plant manager further testified that he discussed "the effect that the increased cost of labor would have on the price of manufactured loaves of bread" with his regional manager in San Francisco, tr. 415, and that, when he ships bread to another Continental plant in Portland, Oregon, the price to be "charged" the sister plant "is computed by our regional manager," tr. 435-436. This is supported by the fact that the regional office has on its staff a "regional cost analyst," tr. 719. The Seattle plant manager was unable to say how the regional manager makes that computation, tr. 436-437. "Q. There is nothing to prevent him [the regional manager] from changing the discount from 40 to 50 or 30 [percent] of whatever he wants, is that correct? A. No, sir." Tr. 438.

¹⁶ This regional manager suggested that Continental's individual baking plants in his region have an autonomy and independence comparable to that of the independently-owned bakeries associated with such organizations as Quality Bakers of America. Tr. 717-718. One of the Seattle plant officials carried it even further: he suggested that "the salesman out there on the route is in business for himself." Tr. 900.

has been no challenge of any kind to the noticed finding that: "Continental's baking plants follow an accounting system prescribed by the headquarters office in New York. *Each week they submit a report* that gives the home office in New York a complete breakdown on the *past week's production, sales, percentage of 'returns,' etc.* The *bakery also submits a weekly 'profit and loss' statement* [to the home office in New York]. A 'Travelling Auditor' audits the bakeries' books twice a year, and may also make additional visits. The regional cost analyst also checks on the bakeries."¹⁷ In view of this close control over "production," "sales," and "profits" by the home office in New York, and in view of the obvious relationship between volume, profits, and prices, even a finding that the Seattle plant manager initially sets his prices without consultation with the regional manager—a finding we do not believe is warranted—would not change the fact that those prices must be and are approved weekly in Rye, New York.

The other testimony by which respondent Continental has sought to "show the contrary" of the facts officially noticed is that of its Seattle plant manager and six of his Seattle supervisory personnel. Their testimony sought to show in substance that notwithstanding the numerous specifics of control exercised over the Seattle operations by their superiors in the regional and home office, there is nonetheless a substantial residuum of discretion left to them. For example, without denying that all "major" advertising is handled by the home office, including the placing and paying for ads in the Seattle media and the supplying of "point-of-purchase" material to be placed in the grocery stores by Seattle driver-salesmen, they testified that the Seattle plant manager has been delegated authority to place small ads in weekly newspapers in the smaller towns.¹⁸ He can employ "demonstrators" and his salesmen are permitted to supplement the "point-of-purchase" advertising materials received from New York with their own hand-lettered signs and displays.¹⁹ Further, it was shown that the Seattle plant manager has been delegated the authority to make minor variations in the prescribed baking formulas and procedures in order to cater to particular local consumer tastes,²⁰ and even to experiment

¹⁷ Opinion of the Commission, p. 17 (emphasis added) [64 F.T.C. 1079, 1120].

¹⁸ See tr. 786-787, where the placing of a small ad in two weekly newspapers ("subscription of 2,500 customers") in the Raymond-South Bend area is reported.

¹⁹ "For example, you take a white card and you might just hit it with some green spray paint and then you give them to your salesmen and he will put on if he is trying to sell French bread, for example, he will put, 'Fresh French. Try a loaf this weekend,' or something of this nature, whatever he happens to come up with." Tr. 878-879.

²⁰ Some areas "prefer a darker crust color to the one we like in Seattle." Tr. 681.

with new bread varieties²¹ in his local area and new package designs for those varieties.²²

The principal thrust of the testimony certified to us here, however, was toward the allegedly "local" nature of the activities of Continental's driver-salesmen. These 112 "route salesmen" deliver bread to established customers on their "routes" and also attempt to "sell" those potential customers that are not yet buying Continental's products. Since about 20% of their total compensation comes from commissions on sales,²³ these driver-salesmen naturally show considerable individual initiative in trying to increase their sales of Continental's products. They make repeated calls on the local grocer, getting to "know some of his background, like if he likes to bowl or fish * * *. I knew all my customers. I knew their families and I could talk to them * * *. [B]y becoming a personal friend or trying to become a personal friend as close as you can with the grocer," the salesman can make him "more receptive to your spiel, so to speak * * *."²⁴

The skill of Continental's Seattle salesmen is hardly sufficient to establish that the business of selling "Wonder Bread" in Seattle belongs to the salesmen, as several of respondent's witnesses intimated here, rather than to Continental Baking Company of New York. The fact remains that they are Continental's agents, driving Continental's trucks, selling Continental's bread, collecting Continental's money and turning that company money in each day for transmission to a New York bank. Those essentials, together with the further noticed facts that all of the raw materials used by the Seattle plant are bought and paid for by the home office in New York, are shipped to Seattle by out-of-state suppliers, and that everything done in the Seattle plant is subject to the rigid discipline of the weekly profit and loss statement that goes to New York, have all been conspicuously avoided in the testimony by which respondent Continental has sought to "show the contrary" of the facts noticed by this Commission in its earlier opinion.

Respondent raises one further point in its instant papers: it alleges that, if the Commission should conclude that Continental has not shown the contrary of the facts previously noticed and thus that the price fixing did in fact occur in interstate commerce, "the Commis-

²¹ Tr. 682 (introduction in Seattle of a new "sesame-top bread" after a competitor had brought it out).

²² *Ibid.*

²³ Tr. 833. "[E]very loaf you sell, you make 7 percent, every extra loaf you sell over that, say, if my business increased \$100 in the next week, that means \$7 more in my pay check."
Ibid.

²⁴ Tr. 803-804.

sion should exercise its discretion to dismiss this proceeding as no longer required by the public interest.”²⁵ In support of this, respondent alleges that the price fixing found by the Commission occurred in 1957–1960; that his finding was based on the activities of the association’s then secretary-manager, a man now deceased; that, of the two Continental employees involved in the matter, one has now retired and the other “is no longer employed by Continental”; that the association is now “defunct” and holds no meetings, price-fixing or otherwise; that one of the larger bakers found to have been a part of the conspiracy, Langendorf, has been acquired by a non-respondent baker; and that some of the 63 respondents named in the cease-and-desist order of February 28, 1964, may not have received copies of the order or other papers.

All of these contentions are patently insufficient as a matter of law to require dismissal. As to the last two—whether all of the respondents in this case will be properly bound by our order—those are problems for the Commission and the courts, not Continental; it has long been settled that, while the Commission should and does attempt to deal as comprehensively as possible with widespread law violations, its failure to stop every member of an industry from violating the law does not require it to dismiss proceedings against the others. *Moog Industries, Inc. v. Federal Trade Commission*, 355 U.S. 411 (1958); *In the Matter of Pacific Molasses Co.*, FTC Dkt. 7462 (Opinion of the Commission, July 20, 1964), 3 CCH Trade Reg. Rep. Par. 16,981 [65 F.T.C. 675].

Respondent’s present contention that the trade association involved in the price fixing found here is now “defunct” illustrates why, in our earlier decision in this matter, we rejected respondents’ request to have the order limited to a prohibition of price fixing accomplished through the particular instrumentality of this association, Bakers of Washington. We pointed out that “an order so limited would leave these respondents free to resume their conspiracy tomorrow, holding conspiratorial meetings at high noon in the most public place in the City of Seattle, so long as they kept the association, Bakers of Washington, out of the matter. Such an order would be no more effective than one limited to a prohibition of price fixing only where it was accomplished by meetings held in a particular place, *e.g.*, at the Athletic Club in Seattle. The order could be avoided by using the telephone instead of having a meeting, or by moving the site of the meeting from the Ath-

²⁵ “Memorandum in Support of Proposed Findings of Fact, Conclusions of Law, and Exception to Recommendation of Examiner,” November 13, 1964, at 26–27.

Final Order

66 F.T.C.

letic Club to other premises." The same considerations apply here. The dissolution of this particular association has no bearing on either respondents' capacity to fix prices or their demonstrated proclivity for doing so.²⁶

Continental's other arguments on the "public interest" question were considered and rejected in our decision of February 28, 1964. An order will issue directing that the cease-and-desist order contained in that decision become effective forthwith.

Commissioner Elman dissented.

Commissioners Reilly and Jones did not participate for the reason that oral argument was heard prior to their taking the oath of office.

FINAL ORDER

The Commission by orders of May 21, 1964 [65 F.T.C. 1308], and June 3, 1964, having reopened this proceeding, reserved ruling on respondent Continental Baking Company's petition for reconsideration, remanded the proceeding to the hearing examiner, and stayed the effective date of the order to cease and desist previously entered herein, for the purpose of permitting respondent Continental Baking Company an opportunity to "show the contrary" of certain facts officially noticed by the Commission in its decision of February 28, 1964; and

The hearing examiner having received further testimony pursuant thereto on July 20 and July 21, 1964, and having certified the record thereof to the Commission on September 24, 1964, together with his recommendation that the Commission affirm its original decision of February 28, 1964 [65 F.T.C. 1079]; and

²⁶ If the dissolution of the trade association is being advanced here as evidence of respondents' "abandonment" of the unlawful price fixing, the argument is even more unsound. It is well settled that a discontinuance of an illegal practice only after the law's hand is already on the offender's shoulder furnishes no basis for the dismissal of a case. *Coro, Inc. v. Federal Trade Commission*, 338 F. 2d 149 (1st Cir. 1964), 5 CCH Trade Reg. Rep. Par. 71,282. Moreover, the latest testimony of Continental's officials—that received on July 20 and 21, 1964—provides us with scant reason for believing respondents have given up their opposition to competition. Continental's sales manager for the City of Seattle, referring to a competitor's recent offering of a 29¢ loaf when Continental's price was 35¢, testified that he "felt that it was wrong" and that it might cause a "bread war or something." So instead of lowering his own price, he sent Continental's salesmen out to take care of it: "Well, the salesmen individually did quite a job on that. They explained to the grocer the fact that it may lead to bread wars or something of that sort that would not be right and it would cut into the grocer's profit and cut into his [the salesman's] commission, because, after all, they work on a commission basis. They did quite a selling job and I felt it was their getting around and talking to these grocers that finally got this other company to get back up or to discontinue that particular deal, anyway." Tr. 759. So successful was this effort that, in some stores, "they actually had the other fellow thrown out or cut down drastically." Tr. 760.

The Commission, having considered respondent Continental's exception to that recommended decision, together with its proposed findings of fact, conclusions of law, and argument in support thereof, including respondent's argument that certain changed circumstances require a dismissal of the proceeding, and having considered the proposed findings of fact and conclusions of law proposed by counsel supporting the complaint and respondent Continental's reply thereto; and

The Commission having concluded that respondent, after having full opportunity therefor, has failed to "show the contrary" of the facts heretofore officially noticed except as noted in the accompanying opinion; that respondent Continental's proposed findings of fact, conclusions of law, and arguments in support thereof should be rejected except as noted in the accompanying opinion; that respondent's exception to the recommendation after remand and its request that the complaint be dismissed by reason of alleged changed circumstances should be denied; that respondent's petition for reconsideration of the Commission's earlier decision should be denied; and that the order to cease and desist previously entered herein should now be made effective:

It is ordered, That the findings of fact noticed in the Commission's opinion of February 28, 1964, be, and they hereby are, modified in accordance with the accompanying opinion, and that respondent's proposed findings, conclusions, and arguments, except as otherwise indicated in the accompanying opinion, be, and they hereby are, rejected.

It is further ordered, That respondent Continental's exception to the recommendation after remand, request for dismissal on the basis of alleged changes in circumstances, and petition for reconsideration of the Commission's earlier decision be, and they hereby are, denied, and that the order to cease and desist issued February 28, 1964, be, and it hereby is, made effective with the issuance of this order.

It is further ordered, That respondents named in the Commission's order of February 28, 1964, 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 issued February 28, 1964.

Commissioner Elman dissenting, and Commissioners Reilly and Jones not participating for the reason that oral argument was heard prior to their taking the oath of office.

Complaint

66 F.T.C.

IN THE MATTER OF

CLARENCE SOLES TRADING AS MIDWEST SEWING
CENTERORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8602. Complaint, Nov. 1, 1963—Decision, Dec. 3, 1964*

Order vacating initial decision and dismissing—insufficient evidence—complaint charging a St. Paul, Minn., retail dealer engaged in selling new and used sewing machines with “bait” advertising to obtain leads to potential purchasers, and falsely stating usual selling price of its new machines, thereby misrepresenting the amount of savings available to customers.

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 Clarence Soles, an individual, trading and doing business as Midwest Sewing Center, hereinafter referred to as respondent, has 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 Clarence Soles is an individual trading and doing business as Midwest Sewing Center, with his principal office and place of business located at 504 North Prior Street in the city of St. Paul, State of Minnesota.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new and used sewing machines to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said product, when sold, to be shipped from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 his business as aforesaid, and for the purpose of inducing the purchase of his said products, respondent has made various statements in advertisements in news-