

Complaint

IN THE MATTER OF

FRANCIS E. MASTBROOK DOING BUSINESS AS
EDISON SEWING MACHINE AND VACUUM CLEANER CO.,
ETC.

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

Docket 8710. Complaint, Sept. 14, 1966—Decision, Mar. 13, 1967

Consent order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease using deceptive means to sell his merchandise, such as alleging certain items were repossessed and purchasers would save paid-in amount, making false guarantee offers, using bait and switch tactics, using contests, prizes, and certificates in a deceptive manner, fictitiously pricing merchandise, and falsely implying that he was conducting a survey for appliance manufacturers.

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 Francis E. Mastbrook, doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, 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 Francis E. Mastbrook is an individual doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, with his office and principal place of business located at 2626 Bladensburg Road, NE., Washington, D.C., 20710.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners and other appliances at retail to the public.

PAR. 3. In the course and conduct of his business respondent maintains his principal place of business within the District of Columbia, and now causes, and for some time last past has caused,

his said products, when sold, to be shipped from his place of business to purchasers thereof within the District of Columbia, and in various 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 and for the purpose of inducing the purchase of his products, respondent now makes, and has made, certain statements and representations in advertisements in newspapers of general circulation respecting the price, savings, guarantee, nature of his products and the status of his business.

Among and typical, but not all inclusive of such statements and representations, are the following:

SEWING MACH.—Auto. zig-zag, reposs., take over payments, \$5 mo., EXCH Credit Dept 526-6951.

SEWING MACHINE—Singer zig-zag, 2 mos. old, like new, bal. only \$62, Pay \$5 per mo., Call Credit Mgr., Cole Adj., 526-1852.

SEWING MACH.—Singer slant needle, like new, repossessed, bal. \$58, \$5 mo. Coles Adj. Serv.—526-1852.

SEWING MACH.—Recond., guar., \$14.95 up. SEW. MACH. EXCH. 2626 Bladensburg rd. ne. LA-6-6950.

PAR. 5. By and through the use of said statements and representations, and others of similar import and meaning but not specifically set out herein, separately and in connection with the oral statements of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of the statements "reposs. take over payments," "repossessed, bal. \$58" and words or statements of similar import, that sewing machines, partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names and designations "EXCH. Credit Dept.," "Credit Mgr. Cole Adj.," "Coles Adj. Serv." and other names and designations of similar import, that his principal business is that of lending money and settling and collecting accounts.

3. That in the guise of such names and designations referred to in 2 above that he is making a bona fide offer to sell repossessed sewing machines for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

PAR. 6. In truth and in fact:

1. Said sewing machines are not being offered for the unpaid balance of the purchase price, and the represented savings were not afforded purchasers.

2. Respondent is not engaged in the business of lending money or of collecting and settling accounts but is engaged in the business of the retail sale of new and used sewing machines, vacuum cleaners and other appliances to the public.

3. Respondent is not making bona fide offers to sell the said sewing machines and on the terms and conditions stated but said offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of such machines. After obtaining leads through response to said advertisements, respondent or his salesmen call upon such persons in their homes or wait upon them in the store, but make no effort to sell the advertised machines. Instead, they exhibited sewing machines which were in such poor condition as to be unusable, and disparaged the advertised product to discourage its purchase, and attempted to and frequently did, sell much higher price sewing machines.

4. The guarantee of said sewing machine contains numerous conditions and limitations which are not disclosed in the advertising.

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

PAR. 7. In the course and conduct of his business and for the purpose of inducing the purchase of his sewing machines respondent periodically conducts a contest in which persons are invited to encircle misspelled words appearing in a newspaper advertisement, the winners to be determined on the basis of most misspelled words found, neatness, and promptness of reply. The grand prize is an Edison sewing machine or a Morse Console Stereo and 25 second prizes of \$50 merchandise certificates and 35 third prizes of \$40 merchandise certificates. Participants in these contests then receive a "gift certificate" by mail. Typical, but not all inclusive of the statements and representations made in said advertisement and follow-up material, are the following:

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The newspaper advertisement (spelling corrected) :

a
WIN new EDISON SEWING MACHINE
OR MORSE STEREO ! ! ! !
F R E E !

(picture of Edison Sewing Machine
model 142B and Morse Stereo Console
phonograph)

G R A N D P R I Z E

25-2nd prizes

\$50 mdse certificates
Machine list (Sewmatic No. 82)\$99.50
Certificate 50.00
Balance 49.50

35-3rd Prizes

\$40 mdse certificates
Machine Price (Sewmatic No. 82)\$99.50
Certificate 40.00
Balance\$59.50

IT'S FUN! YOU CAN BE A WINNER

Follow these Rules

* * * *

NAME _____ PHONE _____
ADDRESS _____
NO. MISSPELLED WORDS _____

Contest Closes Midnight Nov. 28, 1965
Mail Today c/o Edison Contest

The follow-up material (on bank check paper) :

EDISON SEWING MACHINE CO. NO 3428
2626 Bladensburg Road, Northeast Washington 18, D.C. 526-5950

NOT NEGOTIABLE Date _____
Expires 30 days from date \$ _____

PAY
TO

Edison Sewing Machine Co.
(H. A. Bell)
As a credit to be deducted from
initial purchase of merchan-
dise as indicated by attached
letter Authorized Signature

EDISON SEWING MACHINE CO.

2626 Bladensburg Road, Northeast Washington 18, D.C. 526-5950

Congratulations:

You were one of the Gift Certificate Winners in the recent Edison Sewing Machine Contest. Enclosed you will find your Gift Certificate. Your Certificate may be applied at its full value on the purchase of any New Edison Automatic Zig-Zag Sewing Machine, either Portable or Cabinet Model.

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

1. That he conducts bona fide contests and that recipients of said gift certificates have won a valuable prize through their participation in said contests entitling them to a discount in the amount stated on the certificate, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price from which the amount of the gift certificate is deducted is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the sewing machine is being offered.

PAR. 9. In truth and in fact:

1. Respondent does not conduct bona fide contests. His purpose in having persons enter said contests is to obtain leads to prospective purchasers of his sewing machines. And, the purchaser does not receive a prize since the amount of the gift certificate is deducted not from respondent's usual and customary price of the product but from a higher price, and therefore the prize is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine and purchasers are not afforded savings of the difference between that price and the price at which the machine is being offered.

Therefore, the statements and representations as set forth in

Paragraphs Seven and Eight hereof were, and are, false, misleading and deceptive.

PAR. 10. In the course and conduct of his business and for the purpose of inducing the purchase of his sewing machines respondent conducts a door-to-door canvass under the name of Consumer Advertising and Research Service, 4221 71st Avenue, Hyattsville, Maryland. Respondent uses a questionnaire seeking information regarding the appliances presently in the home and those wished to be acquired. Persons contacted are told that their participation entitles them to a chance in a drawing being held by Consumer Advertising and Research Service and they are given a stub of the questionnaire with a corresponding number which states thereon "Retain this stub. It may be valuable to you." Next, the participant receives the following letter:

CONSUMER ADVERTISING AND RESEARCH SERVICE
4221 71st Avenue Hyattsville, Maryland

NATIONAL SURVEY

(Name and address of participant)

(date)

Dear Customer:

Recently we conducted a survey in your area. Through one of the manufacturers we represent, your name has been selected to receive one of their products as a free gift.

Take this letter and your yellow stub given to you at the time of the survey, to Edison Sales, 2626 Bladensburg Road, N.E., Washington, D.C. and receive your gift.

This valuable GIFT LETTER is not transferable and must be presented in person within ten days upon receipt of this letter.

PAR. 11. By and through the use of the aforementioned statements and representations, by oral statements of respondent or his salesmen, and by other written statements and representations of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

Through the use of the name Consumer Advertising and Research Service and in connection with other statements and representations and activities in conducting ostensible surveys, that it is an independent agency representing manufacturers in making surveys to determine whether certain appliances are being used in the home and if not whether they will be acquired in future and that names would be drawn from those interviewed to determine the winners of prizes given by the manufacturer.

In truth and in fact respondent is solely a retailer of sewing

machines, vacuum cleaners and other appliances and uses the name Consumer Advertising and Research Service, makes other statements and representations, and conducts the purported surveys merely as an artifice to obtain names and addresses of prospective purchasers of his products. The names of prize-winners are not drawn but are selected by respondent and a letter is sent to them announcing that they are winners to lure them into the store so that respondent can attempt to sell sewing machines or other appliances to said persons.

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

PAR. 12. In the conduct of his business, and at all times mentioned herein, the respondent has been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of sewing machines, vacuum cleaners and other appliances of the same general kind and nature as those sold by respondent.

PAR. 13. The use by the respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of the respondent as herein alleged were, and are, all to the prejudice and injury of the public and of respondent's 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.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on September 14, 1966, charging respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent having thereafter filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) of the Commission's Rules, to which motion was attached a consent agreement executed by respondent; and

The hearing examiner having certified to the Commission the said motion, with agreement, along with the answer thereto by counsel supporting complaint joining in said motion and requesting counsel's opportunity to execute the agreement as certified; and

The Commission, by order of December 20, 1966, having granted said motion and having thereby afforded counsel supporting complaint opportunity to execute the said agreement; and

The Commission now having considered the aforesaid agreement which has been executed by all the parties, and now having determined that the agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Francis E. Mastbrook is an individual doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, with his office and principal place of business located at 2626 Bladensburg Road, NE., Washington, D.C. 20710.

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

ORDER

It is ordered, That respondent Francis E. Mastbrook, an individual, doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines, vacuum cleaners, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that merchandise has been repossessed or that it is being offered for the balance of the purchase price unpaid by a previous pur-

chaser; or misrepresenting, in any manner, the status, kind, quality or price of the merchandise being offered.

2. Using the names or designations "EXCH. Credit Dept.," "Credit Mgr. Cole Adj." or "Coles Adj. Serv." or other names or designations of similar import or meaning to designate or refer to respondent's enterprise, or otherwise representing, directly or by implication, that respondent is engaged in the business of collecting debts or of adjusting or settling accounts; or misrepresenting in any manner the nature or status of respondent's business.

3. Representing, directly or by implication, that purchasers save the paid-in amount on repossessed merchandise; or misrepresenting in any manner the savings afforded purchasers of respondent's products.

4. Representing, directly or by implication, that products are guaranteed, unless the nature, conditions and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

5. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services on the terms and conditions stated; or using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements to obtain leads or prospects for the sale of other merchandise.

6. Disparaging in any manner or discouraging the purchase of any products advertised.

7. Representing, directly or by implication, that contests are being conducted to determine winners of a prize; or misrepresenting in any manner the way in which names of prospective purchasers are selected.

8. Representing, directly or by implication, that awards or merchandise certificates are of a certain value or worth when recipients thereof are not in fact benefited by or do not save the amount of the represented value thereof.

9. Representing, directly or by implication, that any savings, discount or allowance is given purchasers from respondent's selling price for specified merchandise unless said selling price is the amount at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent regular course of his business.

10. Using the name "Consumer Advertising and Research

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Service," to designate or refer to respondent's enterprise, or representing that he or his representative is conducting a survey; or using any scheme or device, involving the use of false, deceptive or misleading statements, representations or practices by which the names or addresses of prospective purchasers are obtained or by which they are enticed to place themselves in a position where respondent can attempt to sell them merchandise.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.
