

EDWARD L. COX

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

Docket C-1190. Complaint, April 3, 1967—Decision, April 3, 1967

Consent order requiring a Columbus, Ohio, distributor of skip-tracing letters to cease using false and deceptive statements in his debt collection forms.

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 Edward L. Cox, an individual, hereinafter referred to as the 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 Edward L. Cox is an individual residing at 496 South Hamilton, Columbus, Ohio. For some time last past the respondent has been an officer of Intrastate Credit Control Systems, Inc., an Illinois corporation doing business as State Bureau of Credit Control with its principal office and place of business located in Barrington, Illinois. He has formulated, directed and controlled the acts and practices of the corporation, including those acts and practices which are hereinafter set forth and described as the acts and practices of the respondent.

PAR. 2. For some time last past the respondent has been engaged in the advertising, offering for sale, sale and distribution of collection forms to dealers for resale to businessmen and to businessmen directly. The respondent has also been engaged in the operation of a remailing service with respect to such forms.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has caused his said forms, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States, 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. Respondent's forms are designed and intended to be used, and are used, by businessmen and others to whom they are sold for the purpose of inducing the payment of alleged delinquent accounts, with the aid and assistance of the respondent as hereinafter set forth.

Respondent's forms are of two types: (1) those which are designed to accompany a statement of account made by the creditor under his own name; and (2) those which are designed to be inserted in envelopes provided by the respondent, which envelopes show a return address in the capital city of one of the States of the United States.

Among the forms of the first type is one which contains the following statement: "We MUST hear from you within Ten Days or this account will be turned over to—STATE BUREAU OF CREDIT CONTROL."

All of the forms of the second type bear the letterhead of "State Bureau of Credit Control" together with a post office box number in the capital city of one of the States of the United

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States. A user of this type of form fills in the appropriate data in the spaces provided, including the name and address of the alleged debtor and the amount of the alleged indebtedness, and sends the completed form to respondent's agent in the capital city of the appropriate State. Respondent's agent then mails the form from that location.

Among and illustrative of respondent's forms, although not all inclusive thereof, are the following:

STATE BUREAU OF CREDIT CONTROL

P.O. Box 1026, JEFFERSON CITY, Mo.

To: _____	Date _____
_____	Creditor _____
Name	Address _____
_____	_____
Address	Past Due Amount _____
_____	Collection Charge _____
City State	

A routine examination of the above named creditor's delinquent accounts is being made with consideration for legal action to affect settlement.

An unpaid account in amount listed above, which is stated to be just and legally due, appears against you.

Since this may be an oversight on your part, we are sending you this notice TEN (10) DAYS in advance of any proceedings to afford you an opportunity to make settlement *with your creditor*.

Full payment, or arrangements for payment of this account must be made within the specified time limit. Contact *your creditor* immediately to avoid further action.

Very truly yours,

/s/ Alfred L. Burr
ALFRED L. BURR,
State Collection Supervisor.

REFERRED TO FILE OF COUNTY COLLECTION SUPERVISOR ●

STATE BUREAU OF CREDIT CONTROL

P.O. Box 835, SPRINGFIELD, ILLINOIS

To: _____	Date _____
_____	Creditor _____
Name	Address _____
_____	_____
Address	Past Due Amount _____
_____	Collection Charges _____
City State	Date Serving Writ _____
	Writ Returnable _____
	Court of Action _____

You have had several requests to contact your creditor for settlement of the above account.

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Since we have had no indication that these requests have been heeded, there appears to be no other recourse than to begin court action.

You should therefore assert yourself within the next FIVE (5) DAYS if you believe you have a legitimate reason for not paying this account.

Do not contact this office. We cannot, in the limited time remaining, stop impending action. To avoid expensive court costs, you must arrange payment *with your creditor immediately.*

Very truly yours,

/s/ Alfred L. Burr
ALFRED L. BURR,
State Collection Supervisor.

REFERRED TO FILE OF COUNTY COLLECTION SUPERVISOR ●●●

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, the respondent has represented, and placed in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that:

(a) A request for payment or other request regarding an allegedly delinquent account is being made by an agency of State government.

(b) A request for payment or other request regarding an allegedly delinquent account originates with a party other than the creditor.

(c) An allegedly delinquent account has been or is about to be referred to "State Bureau of Credit Control" for collection.

(d) Legal action with respect to an allegedly delinquent account has been or is about to be initiated.

PAR. 6. In truth and in fact:

(a) The request for payment or other request regarding an allegedly delinquent account is not being made by an agency of State, Federal or local government.

(b) The request for payment or other request regarding an allegedly delinquent account originates with the creditor.

(c) The allegedly delinquent account has not been, nor is it about to be referred to "State Bureau of Credit Control" for collection.

(d) Legal action with respect to the allegedly delinquent account has not been, nor in many cases is it about to be, initiated.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and

now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Edward L. Cox is an individual residing at 496 South Hamilton, Columbus, Ohio. For some time last past he has been an officer of Intrastate Credit Control Systems, Inc., an Illinois corporation doing business as State Bureau of Credit Control, with its principal office and place of business located in Barrington, Illinois.

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 Edward L. Cox, an individual, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the collection of, or the attempt to collect, accounts, or with the solicitation of information concerning debts or debtors, or with the offering for sale, sale or distribution of forms, or other materials, for use in the collection of, or the attempt to collect, accounts, or in the solicitation of information concerning debts or debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "State Bureau of Credit Control," "State Collection Supervisor," "County Collection Supervisor," or abbreviations thereof, or any other words or abbreviations of similar import or meaning which indicate or suggest that respondent is affiliated in any way with any governmental entity, whether State, Federal or local, to refer to respondent's business or to any person connected therewith;

2. Representing, or placing in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that any communication with respect to an allegedly delinquent account is being made by, through, under the aegis of, or in connection with any governmental entity or agency, whether State, Federal, or local;

3. Mailing any collection letters, notices of debt due, or any other collection materials to any person indebted to a third party, or otherwise contacting any such person unless respondent has actual authority from the creditor to collect or otherwise compromise the debt; and unless an exact description of the extent and nature of the respondent's authority to act in connection with such debt is conspicuously and prominently stated to the debtor;

4. Offering for sale or selling any form, letter, notice or other document, individually or in package or series form, for debt collection purposes which bears respondent's letterhead or any name other than that of the purchaser or of a person designated by the purchaser which represents in any way directly or by implication that a delinquent account has been referred to respondent or any other third party for collection;

5. Authorizing any creditor to utilize respondent's name or any trade name or style which respondent may adopt or use in connection with any debt collection activity whether directly or through third parties on the part of such creditor;

6. Representing directly or by implication that:

(a) Respondent is engaged in the business of collecting delinquent accounts with authority to effect collection by whatever means necessary;

(b) Any delinquent account has been referred to it for collection;

(c) Any legal or other action will be instituted to effect collection or reflect unfavorably on the credit rating of the debtor;

Provided, however, It shall be a defense hereunder for respondent to establish that it is engaged in the bona fide collection of delinquent accounts, has the authority and good faith intent to take any represented action, and the specific account in question has been referred to it for collection;

7. Engaging in any scheme, practice or business activity by and through which creditors may falsely represent that a delinquent account has been referred to a bona fide, independent collection agency; any third party has the authority to effect collection of a delinquent account; the delinquent account has been referred to an instrumentality of or agency affiliated with any governmental unit.

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.

IN THE MATTER OF

SEWING MACHINE COMPANY OF AMERICA DOING
BUSINESS AS DOMESTIC CREDIT COMPANY ET AL.

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

Docket 8693. Complaint, July 13, 1966—Decision, April 5, 1967

Order requiring a St. Paul, Minnesota, sewing machine retailer to cease using bait advertising, fictitious pricing and savings claims and other deceptive selling practices as set forth in the order below.

5. Authorizing any creditor to utilize respondent's name or any trade name or style which respondent may adopt or use in connection with any debt collection activity whether directly or through third parties on the part of such creditor;

6. Representing directly or by implication that:

(a) Respondent is engaged in the business of collecting delinquent accounts with authority to effect collection by whatever means necessary;

(b) Any delinquent account has been referred to it for collection;

(c) Any legal or other action will be instituted to effect collection or reflect unfavorably on the credit rating of the debtor;

Provided, however, It shall be a defense hereunder for respondent to establish that it is engaged in the bona fide collection of delinquent accounts, has the authority and good faith intent to take any represented action, and the specific account in question has been referred to it for collection;

7. Engaging in any scheme, practice or business activity by and through which creditors may falsely represent that a delinquent account has been referred to a bona fide, independent collection agency; any third party has the authority to effect collection of a delinquent account; the delinquent account has been referred to an instrumentality of or agency affiliated with any governmental unit.

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.

IN THE MATTER OF

SEWING MACHINE COMPANY OF AMERICA DOING
BUSINESS AS DOMESTIC CREDIT COMPANY ET AL.

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

Docket 8693. Complaint, July 13, 1966—Decision, April 5, 1967

Order requiring a St. Paul, Minnesota, sewing machine retailer to cease using bait advertising, fictitious pricing and savings claims and other deceptive selling practices as set forth in the order below.

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 Sewing Machine Company of America, a corporation, doing business as Domestic Credit Company, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, 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 Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota. Respondents Eldon J. Metaxas and Ralph T. Corrigan are individuals and officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The offices and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota.

Respondents, at times, trade under the name of Domestic Credit Company.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines to the public.

PAR. 3. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold to be transported from their place of business in the State of Minnesota 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 as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms and conditions of sale of their products.

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

Singer—console cabinet. This famous make sewing machine is equipped to zig-zag, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of \$44.00. \$5.50 discount for cash. Write: Credit Manager, Domestic Credit, 1538 West Larpenteur, St. Paul, Minnesota.

PAR. 5. By and through the use of aforesaid statements and representations, and others of similar import not specifically set out herein, by oral statements and representations of their salesmen, and by the use of the trade name Domestic Credit, separately and in connection with such statements and representations, the respondents represent, and have represented, directly or by implication:

1. That their principal business is that of lending money, providing credit to purchasers of merchandise, and buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit.

2. That as a finance company they are making a bona fide offer to sell a repossessed sewing machine, as described in said advertisement, for reason of default in payments therefor by the previous purchaser, and on the terms and conditions stated.

PAR. 6. In truth and in fact:

1. The respondents principal business is not that of lending money, or providing credit to purchasers of merchandise, or buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit. Respondents are engaged in the business of selling sewing machines to the public.

2. The respondents are not a finance company making a bona fide offer to sell a repossessed sewing machine as described and on the terms and conditions stated, but said offer was and is made for the purpose of obtaining leads and information as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondents, or their salesmen, call upon such persons, but make no bona fide effort to sell said sewing machine which was and is manifestly unsuitable, undesirable and not the product described in their advertisement, after which they attempt to and frequently do sell a different and higher priced product.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their sewing machines, respondents, or their salesmen, have made numerous

oral statements with respect to higher and lower prices of their sewing machines and the resultant savings to purchasers.

By and through the use of said statements with respect to the prices of their sewing machines, respondents have represented, directly or by implication, that their products are being offered for sale at special or reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

PAR. 8. In truth and in fact, the respondents' products are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

Therefore, the statements and representations referred to in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. 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 of the same general kind and nature as those sold by respondents.

PAR. 10. 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. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair 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. William A. Somers and Mr. Harold G. Sodergren supporting the complaint.

Mr. Thomas M. Murphy, Kempe & Murphy, West Saint Paul, Minn., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

FEBRUARY 23, 1967

PRELIMINARY STATEMENT

By its complaint, issued July 13, 1966, the Federal Trade Commission charged respondents with using deceptive means to sell sewing machines in violation of Section 5 of the Federal Trade Commission Act.

The deceptive means charged were: 1) respondents, by using the name Domestic Credit Company and by their advertising, created the false impression that their principal business was lending money rather than selling sewing machines; 2) the advertised offers of machines were bait to obtain leads to persons interested in purchasing sewing machines, because the respondents made no bona fide effort to sell the advertised machines but instead attempted to sell a more expensive machine; 3) respondents also misrepresented that their sewing machines were sold at a special or at reduced prices. In fact, respondents did not have a regular selling price, as their prices vary from customer to customer.

In addition, the complaint identified respondents, stated the relationship between them, and made the usual jurisdictional allegations, including the allegation that respondents are in commerce and the acts charged take place in commerce.

Respondents' answer, filed August 15, 1966, admitted the state of incorporation of Sewing Machine Company of America and it admitted that Eldon J. Metaxas was an officer thereof; but respondents' answer denied that the corporate respondent did business as Domestic Credit Company or that Ralph T. Corrigan was an officer of corporate respondent. (Respondents, during pretrial, admitted that the corporate respondent did business as Domestic Credit Company. During the hearing Eldon J. Metaxas testified that Ralph T. Corrigan was secretary-treasurer of the corporate respondent during 1964 and 1965, but dropped out as secretary-treasurer shortly after the Commission issued its complaint, although he continued as a salesman (Tr. 301-302).) Respondents also admitted the jurisdictional allegations of the complaint, but generally denied the other allegations.

This case was first assigned to Honorable Joseph W. Kaufman, who conducted a prehearing conference, certified the necessity of holding hearings in more than one place to the Commission who approved. He then entered a prehearing order dated September

14, 1966. This order fixed the dates and places of the hearings and provided for discovery of the names of witnesses and for the production of documents. The undersigned was substituted for Mr. Kaufman on October 12, 1966, and heard the evidence.

Hearings commenced Monday, December 5, 1966, at Rockford, Illinois, and continued there on two successive days. After a day's interval for travel, hearings resumed first at Mason City, Iowa, on Thursday and Friday, December 8 and 9, 1966, and then at Minneapolis, Minnesota, on Monday, December 12, 1966; all pursuant to the Commission's order, dated September 8, 1966, that modified Rule 3.16 of the Rules of Practice.

At the conclusion of complaint counsel's case, counsel for respondents moved to dismiss. Ruling was then reserved (Tr. 307). The motion is now denied.

This Initial Decision is based on the record as a whole and on the demeanor of the witnesses. References¹ to particular parts of the record are cited as examples only. Proposed findings of fact and conclusions of law submitted by counsel supporting the complaint and not included herein in substance or in the language proposed are rejected as immaterial, irrelevant, or erroneous. Respondent by letter dated January 18, 1967, waived submission of findings and conclusions. The following findings of fact, conclusions, and order are made.

FINDINGS OF FACT

A. Respondents and Their Business

1. Respondent Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota. Respondent Eldon J. Metaxas is an officer of corporate respondent. Respondent Ralph T. Corrigan is a salesman who had been secretary-treasurer of corporate respondent during 1964 and 1965 but had dropped out as an officer shortly after the Commission issued its complaint. He has since continued with the corporation as a salesman (Tr. 301-302). Metaxas directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. While an officer Corrigan also directed and controlled the acts and practices of corporate respondent (Tr. 301-302). The office and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota (C; A).

¹ The following abbreviations will sometimes be used: C=Complaint, A=Answer, Tr.=Transcript page, CX=Commission's Exhibit, RX=Respondents' Exhibit.

2. Respondents, at times, trade under the name of Domestic Credit Company. That company is a division of the corporate respondent (Tr. 300-301). (Prehearing Order dated September 14, 1966.)

3. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of sewing machines to the public (C; A).

4. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold, to be transported from their place of business in the State of Minnesota 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 (C; A).

5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms, and conditions of sale of their products (C; A).

6. 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 of the same general kind and nature as those sold by respondents (C; A).

B. The Use of the Name Domestic Credit Company Charge

1. In connection with their business, respondents have caused advertisements in newspapers of general circulation to be run for the purpose of inducing the purchase of their products (C; A).

2. A typical advertisement showing the character of the statements and representations made is the following:

Singer—console cabinet. This famous make sewing machine is equipped to zig-zig, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of \$44.00. \$5.50 [per month or] discount for cash. Write Credit Manager, Domestic Cred, 1538 West Larpenteur, St. Paul, Minnesota. (Brackets were added on basis of testimony of respondent Metaxas that the advertisement contained a misprint (CX 50, 54; Tr. 302-303)).

3. Similar advertisements were ordered by the corporate respondent in newspapers of general circulation in rural areas in

Illinois, Iowa, and other States (see CX 55 a-c, 58; Stipulation; Tr. 133, 180).

4. By the use of such advertisements, and particularly by the use of the name Domestic Credit and the word "balance" respondents represented that they were in the business of lending money and providing credit to purchasers of merchandise and that they were making a bona fide offer to sell a repossessed sewing machine, as described in said advertisements, because of default by a purchaser in making payments.

5. A number of prospective purchasers of sewing machines testified that in answering the advertisement they believed they were dealing with a finance company (Tr. 67, 87, 107, 154, 181, 194, 236, 261), although others thought they were dealing with a sewing machine company that had repossessed its machines (Tr. 47, 217).

6. The business of corporate respondent is primarily that of selling sewing machines. The name Domestic Credit is unregistered and used to designate a division of the corporate respondent (Tr. 300-301). In a number of instances the corporate respondent, rather than finance its sales sold the credit or assigned the conditional sale to a commercial credit concern (Tr. 41, 57, 238).

7. Although in some instances cash payments were made to Domestic Credit (Tr. 201, 251), clearly the credit operation was incidental to and not the major factor in respondents' business. Moreover, the suggestion that such machines were repossessed naturally led customers to expect a relatively new, rather than an old, machine. The Singer sewing machines showed to customers in almost all cases were older machines. In addition, they were mostly trade-ins (Tr. 313). Hence, advertising the Singer sewing machines as if they were repossessed by a credit company was false, misleading, and deceptive.

C. The Bait-and-Switch Charge

1. The advertisements used by respondents created the impression on some customers that a new repossessed Singer sewing machine was being advertised (Tr. 87).

2. In fact, the Singer sewing machine first showed to customers had the appearance of being very old in most instances. Respondents' technique was designed to direct the customers' attention to the newer Domestic sewing machines (Tr. 7, 58, 68, 95, 109, 155). In one instance respondent Metaxas explained to a witness that the Singer machine showed first was heavy duty

"that it would sew heavier material which, of course, in ordinary sewing you wouldn't" (Tr. 91). In other instances respondent Metaxas said the old machine he showed was not the one advertised (Tr. 181); the advertised machine had already been sold (Tr. 22). In still another instance respondent Metaxas did not even show the sewing machine advertised (Tr. 219).

3. In some instances, the corporate respondent's salesman demonstrated the old Singer sewing machine before showing a Domestic sewing machine of new appearance (Tr. 19, 108, 116). In other instances, little or no demonstration or sales talk was given (Tr. 36, 71, 72). Whenever the customer indicated disinterest in the old Singer sewing machine, respondents stopped all effort to sell it and brought in a Domestic sewing machine that had a new appearance (Tr. 16, 58, 61, 72-74, 96-97, 249). In two instances respondent Corrigan told the customer that she would not be interested in the old machine, which was advertised, and that he would show her a newer one (Tr. 35, 262, 271).² In another instance, the customer had to insist upon seeing the old machine before Corrigan brought it in and then he scoffed at it (Tr. 237).

4. In some instances, the customer witnesses made it clear that no amount of salesmanship would have caused them to buy the older machine (Tr. 97, 144, 255), although in a number of instances customers stated they would have bought the Singer sewing machine if it had been like the machine advertised (Tr. 101, 111-113, 138, 155, 182, 197, 237, 248, 262-3).

5. While several of the customers testified that the old Singer sewing machine first produced did not conform to the advertisement (Tr. 86-87, 137-138, 155, 160, 237, 246-247), this was presumably because they believed that the advertisement meant a sewing machine that had built-in capabilities³ for zigzag sewing and buttonhole stitching (Tr. 103). In fact, the old Singer sewing machine by the use of separate attachments could perform zigzag sewing and buttonhole stitching (Tr. 103, 143, 315, 322, 327). And, at least one Singer sewing machine had built-in zigzag features (Tr. 117). Respondents' salesman made no effort to demonstrate such attachments when the customer showed disinterest in the old Singer sewing machine (Tr. 104-105).

6. Gross profits on the sale of trade-in Singer sewing machines were a fraction of the gross profit realized on the sale of the

² We do not credit the general testimony of respondent Metaxas to the contrary (see Tr. 345).

³ The words "equipped to" appearing in the advertisement are ambiguous: Webster's New Collegiate Dictionary, 1961 Edition, has the following definition of "Equip"—1. To furnish for service; to fit out, as troops. 2. To dress; array."

Domestic sewing machines (compare prices at Tr. 339 with the sales prices shown in CXs 1-44, 46, 48-49, 51-54, 56-57, 59-62, 64-65, less the approximate cost of the machines showed in CX 68 *in camera*).

7. Very few of the trade-in Singer sewing machines were sold in the States of Illinois and Iowa where the consumer witnesses who had testified about respondents' sales techniques had come from (Tr. 357).

8. Respondents' salesmen carried very few Singer sewing machines as compared with the newer appearing Domestic sewing machines (see Tr. 283), and respondents stocked fewer Singer sewing machines than the newer Domestic sewing machines (compare Tr. 280-281 with Tr. 283).

9. Respondents secured leads for the sale of sewing machines from advertising, from display advertising, and from referrals (Tr. 362-3). However, in Illinois and Iowa, there was no display advertising (Tr. 363). The only advertisements were for Singer sewing machines (Tr. 312, 362).

10. From the foregoing, we find that the respondents' advertising of repossessed Singer sewing machines, which were actually trade-ins, was primarily for the purpose of obtaining leads for the sale of the higher priced, higher profit Domestic sewing machines and that respondents by their selling techniques attempted to divert the consumer from purchasing the Singer machines and concentrated on selling the higher priced Domestic sewing machines (Finding C 1-9).

D. The Fictitious Price Charge

1. In some instances, respondents made a specific oral representation to customers about the regular price of a new Domestic sewing machine (Tr. 7, Model 264, \$239.95; Tr. 36, Model 464, \$269.95; Tr. 219, \$268 or \$269; Tr. 238, \$269.95); and, then, offered a discount varying from \$50 to \$150 below the stated price (Tr. 7, 36, 69, 182, 195, 219, 238).

In other instances, customers relied on the representation contained in the booklet supplied with the machines. For Model 264 the stated price was \$239.00. A discount off this stated price was also granted (Tr. 55, 87).

2. The salesman for corporate respondent in offering the discount usually represented that the Domestic machine was repossessed and that the discount was given because part payment had already been received (Tr. 36, 68, 87, 109, 136, 157, 182, 219, 238, 250, 263).

3. The Domestic sewing machines that were sold appeared to most of the customers, who testified, to be new machines (Tr. 11, 18, 23, 37, 47, 56, 88, 119, 159, 184, 254, 267). The attachments were in unopened plastic bags, the electric cord was wound, there was no lint evident, and a new guarantee was given (Tr. 11, 12, 18, 23, 36, 47, 56, 88-90, 120, 159, 220, 253).

4. While respondent Eldon Metaxas testified that he had cleaned up the repossessed machines and had obtained new guarantee cards and new attachments for them (Tr. 347-349), he kept incomplete records of their serial numbers and had no way of telling whether or not any particular machine was new or repossessed (Tr. 379-380, 386). He could not even estimate the percentage of machines repossessed (Tr. 366-7); or the number repossessed (Tr. 346). Moreover, Metaxas admitted that in the process of salesmanship, customers were sometimes told a not entirely factual story, such as not naming a neighbor if the machine was repossessed from one (Tr. 352) or if he felt the facts might create hard feelings (Tr. 351). In addition, he did not contradict the testimony of the witnesses who said the Domestic sewing machines they had received were new. Moreover, there was no notation on the sales documents pertaining to such witnesses that the machines sold were used (CX 48-49, 51-54, 56-57, 59-62, 64-65). The warranty or guarantee card given the customer, in fact, specifically described the machine as "this new Domestic Sewing Machine" (CX 47). By contrast, it was stipulated that the Singer sewing machines sold were used machines (Tr. 357-358).

5. There was no testimony tending to establish a regular price for Domestic sewing machines in the areas in which the witnesses who were called by complaint counsel resided (Tr. 79, 123, 149, 214-215), except in that area within about a 90-mile radius from Des Moines, Iowa, where one dealer testified that his price for a Domestic sewing machine, Model 265, was \$150; and for Model "646" [sic], \$180-\$200 (Tr. 171-172, 177). The other dealers merely said there were no dealers selling Domestic sewing machines in their sales area.

6. Respondent Metaxas testified that there were other direct salesmen working in Iowa and Illinois (Tr. 354, 355) who were selling Domestic sewing machines and he found out what they had on their factory suggested list. He also used the suggested prices of the White Sewing Machine Company⁴ for comparable

⁴ This company sells the Domestic sewing machine (Tr. 281) and the White sewing machines, but the latter are sold on a franchise arrangement (Tr. 298).

machines. When he called on customers, he asked them to bring out their Montgomery Ward and Sears, Roebuck catalogues and to do some comparative shopping from these catalogues. He never quoted or advised his salesmen to quote a price other than the suggested list price. The ultimate price quoted would depend on what he received in trade. Almost every time he would have something offered in trade, more often than not a sewing machine, but he had an occasion when he took in a veal calf; another salesman took in a motorcycle. They traded "shotguns—everything" (Tr. 356). The suggested list price of White sewing machines was used as the place to begin fixing the ultimate price (Tr. 356).

7. In practice, based on the sales documents for the 80 odd sales of Domestic sewing machines that respondents produced and complaint counsel offered in evidence, the sales prices quoted for the two best sellers, Models 264 and 464, ranged from a low of \$90 (CX 21) to a high of \$269 (CX 42, 2nd invoice) for Model 264; and from a low of \$110 (CX 1) to a high of \$350 (CX 10) for Model 464 (CX 42, 2nd invoice). In 17 cases, \$239.95 the suggested retail price, was stated as the price for Model 264. In 34 cases a different price was stated (CX 21-44, 46, 48, 51, 53, 57, 61, 65). In two cases the price \$239 instead of \$239.95 was quoted. In seven cases, \$269.95 was the suggested retail price for Model 464, and in 15 cases a different price was quoted (CX 1-20, 52, 54). In those cases in which a cash price equal to the suggested retail price was quoted, a deduction with a notation "trade in & disc" reduced the price paid well below the suggested price or notation of a lesser cash payment was marked "paid in full." (*Id.*)

8. As appears from the foregoing, there was no established price for the retail sale of Domestic sewing machines in the marketing area, which was covered by the testimony of the consumer witnesses, either for respondents or generally. Respondents fixed different prices in a great number of instances. Hence the quotation of an established price was false, misleading, and deceptive.

E. Effects

1. A store owner in Elgin, Illinois, testified that in his opinion the drop in sales of sewing machines by his store was caused by spurious advertising (Tr. 128).

2. The hearing examiner draws the inferences that: a) prospective sales of sewing machines by respondents' competitors would normally be diverted to respondents because of the false

advertising and other unfair acts and practices shown; and b) such false advertising and other unfair acts and practices have had and now have the capacity and tendency to mislead a number of the purchasing public into purchases of substantial quantities of respondents' products by reason of the erroneous and mistaken belief that the representations made were and are true. The examiner further infers that the foregoing acts and practices prejudice and injure the public and respondents' competitors.

REASONS FOR DECISION

The hearing examiner credited the testimony of the consumer witnesses who described respondents' sales technique. No witnesses were permitted in the courtroom while another witness was testifying. The demeanor of the witnesses and the consistency of their experience under such circumstances impressed the hearing examiner.

The consumer witnesses were misled by respondents' advertising. And, the advertising was literally false in at least one respect, that trade-in Singer sewing machines but not repossessed ones were involved. The consumer witnesses would have bought a Singer machine if it was as advertised or was as they interpreted the advertisement. The testimony of respondent Eldon Metaxas, while plausible to a degree, shed no light on the reason for advertising a trade-in machine as repossessed or the reason for using the fictitious name "Domestic Credit Company." A person reading the advertising would almost necessarily picture a new model machine that had been taken over by a finance company and not an old appearing model. The fact that the older appearing model Singer by the attachment of legs could become a console and by the addition of mechanical attachments could perform the stitches advertised, is beside the point.

Moreover, Eldon Metaxas' testimony, supported by several consumer witnesses, that he and his salesmen always made a good try to demonstrate the old Singer machine before he brought in the newer Domestic sewing machine and that he did not bring in the newer machine until he was convinced that he could not sell the Singer, is also not a good defense even if true. Respondents' business operation, taken as a whole, demonstrated that the Singer machines were not intended to be sold. They were so old in appearance that they immediately repelled several customers. They were not as new as one would expect from the advertisement. The salesmen carried relatively few of them on their trips

and respondents stocked relatively few. Very few old Singers were sold in Iowa and in Illinois. And, the gross profit on the Singers was much less than the gross profit on the Domestic sewing machines. Moreover, the instances where the Singer machine was not shown to the customer or was disparaged, are sufficient for us to conclude that respondents used such machines merely to secure leads to customers and to secure entry into their homes. What, really, was meant to be sold was the higher profit, higher cost but less well-known Domestic sewing machine. Thus, we conclude that misleading advertising and a bait-and-switch operation were clearly established.⁵

With regard to the third point in the case, the quoting of a fictitious price, it was very clear from the consumer witnesses' testimony and the sales documents that respondents did not quote a regular price. The prices quoted by respondents varied tremendously. And, there was no proof that anyone else had established a price, except the proof about the Des Moines marketing area where prices of one dealer were much lower than the suggested retail prices that Metaxas claimed as his base. Considering the net prices paid by respondents (CX 68, *in camera*) the markups to the suggested price would be unreasonable in any normal operation.

We do not credit the claim that all sales made to consumer witnesses were sales of repossessed machines. Eldon Metaxas frankly admitted that the talk about repossession was sometimes not factual. His admission was an understatement. Moreover, he could not even estimate the number or the percentage of machines repossessed, nor could he produce any records. The sales records in evidence bore no indication that the machines sold were used or repossessed machines. The warranty card that Metaxas said he filled out for such customers expressly referred to the machine warranted as a new one. These circumstances, in addition to the testimony describing the new appearance of the machines by the consumer witnesses, leads us to determine that the Domestic machines in most instances were new ones and the prices fixed on them were fixed on the basis of charging what the traffic would bear.

Hence, we have determined that respondents were deliberately quoting prices they knew were fictitious.

⁵ Discussion of applicable policy and decisions appears unnecessary in view of the detailed consideration of the same problems by Hearing Examiner Moore in *Royal Construction Company, et al.*, Docket 8690, Initial Decision dated January 30, 1967 [p. 762 herein], now on appeal to the Commission, and *Consolidated Sewing Machine Co., et al.*, Docket 8705, Initial Decision dated February 14, 1967 [p. 356 herein].

One last point concerns the inclusion of the individual respondents in the order. We take the position that the individuals should be included. The evidence is clear that each participated in the unfair acts and practices. The use of the fictitious name Domestic Credit in the advertising and the rapid movement of principals in and out of the company with their obviously erratic method of keeping records leads us to believe that the public will not be protected unless the individuals who were principals in the unfair acts and practices are included in the order. It would be too simple for the individual respondents to open up shop under a new name and to continue the same type of misleading activity. The use of "Domestic Credit" in advertising is an indication of the instability of the corporate respondent. To limit the order to the corporate respondent would leave the door open to continued misleading operations by the individuals responsible here. Hence we adopt the following conclusions and the order.

CONCLUSIONS

1. The Federal Trade Commission had jurisdiction over respondents, and the acts and practices complained of took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.
2. Respondents, in their advertising, misrepresented the character of their operation and misrepresented the goods advertised.
3. Respondents utilized a bait-and-switch technique by falsely advertising an old trade-in Singer sewing machine for the purpose of obtaining leads. And, when access to a customer was obtained, respondents sought to sell a more expensive, higher profit Domestic sewing machine.
4. Respondents misrepresented the price quoted to customers as an established price. In fact, there was no established price. Respondents fixed the price to each customer on the basis of what the traffic would bear.
5. These false and misleading activities diverted customers to respondents and were thus detrimental to respondents' competitors and to the public at large.
6. The acts and practices established constituted unfair acts and practices in commerce prejudicial to the public interest and were in violation of Section 5 of the Federal Trade Commission Act.
7. The following order should be entered.

ORDER

It is ordered, That respondents Sewing Machine Company of America, a corporation, and its officers, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, doing business under the name of Domestic Credit Company or any other name or names, and respondents' agents, representatives 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:

1. Using the word "credit" or any word or words of similar import or meaning as a part of their trade or corporate name or representing in any manner that respondents' business is that of lending money or providing credit to purchasers of merchandise, or buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit.
2. Misrepresenting in any manner the status or nature of respondents' business.
3. Advertising or offering any product for sale for the purpose of obtaining leads or prospects for the sale of their products unless the product shown or demonstrated to the prospective purchaser does in all respects conform to the representations and description thereof as contained in the advertisement or offer.
4. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made to obtain leads or prospects for the sale of other merchandise.
5. Representing, directly or by implication, that any merchandise is being offered for sale when such offer is not a bona fide offer to sell such merchandise.
6. Representing, directly or by implication, that any price for respondents' products is a special price or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, the prices at which such products have been sold or offered for sale by respondents.

7. Misrepresenting, in any manner, savings available to purchasers of respondents' products.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review, and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 5th day of April, 1967, become the decision of the Commission.

It is further ordered, That Sewing Machine Company of America, a corporation, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, doing business under the name of Domestic Credit Company, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
