

Complaint

IN THE MATTER OF

ALAN LIBMAN DOING BUSINESS AS BRAND STORES

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1234. Complaint, June 30, 1967—Decision, June 30, 1967*

Consent order requiring a Boston, Mass., retailer of sewing machines and vacuum cleaners to cease using bait advertisements, deceptive pricing and savings claims, and other deceptive means to sell his merchandise.

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 Alan Libman, an individual, doing business as Brand Stores, 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 Alan Libman is an individual doing business as Brand Stores with his principal office and place of business located at 374 Massachusetts Avenue, in the city of Boston, State of Massachusetts.

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 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 products, when sold, to be shipped from his place of business in the State of Massachusetts 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, and for the purpose of inducing the purchase of his products, respondent has made certain statements and representations in advertisements inserted in newspapers having general circulation and by oral representations to prospective purchasers respecting the bona fide character of the offer, availability of merchandise, prices, savings and financing.

Among and typical, but not all inclusive, of the statements and

representations contained in such advertisements are the following:

NECCHI SEWING Machine last years' model, never used, equipped to zig-zag, make button holes, darn monogram, etc. Original 5-year guarantee. \$20 complete, will take \$1.00 weekly. Call 889-0124 any time.

* * * * *

ELECTROLUX Vacuum Cleaner, runs like new, all attachments, rugs, upholstery, bare floors, dusting, etc. 2 year written guarantee. \$15 complete, will take \$1 weekly. Call 889-0124 any time.

* * * * *

SINGER SEWING Machine—Rebuilt, runs like new, equipped to zig-zag, make button holes, etc. Written 5 year guarantee. \$15 complete, will take \$1 weekly. Call Brand Stores, 889-0124 any time.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not specifically set out herein, and by the oral statements and representations of his salesmen, respondent represents, and has represented, directly or by implication, that:

1. The offer set forth in said advertisements was a bona fide offer to sell the advertised products at the prices and on the terms and conditions stated.

2. The advertised products are in respondent's stock of merchandise and they are available for purchase.

3. Respondent's products are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondent's regular selling prices.

4. No finance company would be involved in the financing of the customer's purchase and that the customer's account would be handled by respondent's business.

PAR. 6. In truth and in fact:

1. Respondent's offers are not genuine or bona fide offers to sell the advertised products at the prices and on the terms and conditions stated, but were made for the purpose of obtaining leads as to persons interested in the purchase of respondent's products. After response to said advertisements respondent's salesmen called upon such interested persons in their homes but made no effort to sell the advertised products. Instead, they exhibited what they represented to be the advertised merchandise but which because of its poor appearance and condition, elicited little interest on the part of the prospective purchaser. Concurrently, respondent's salesmen presented a new higher priced machine whose superior appearance and condition by comparison disparaged and demeaned the advertised product, and they otherwise dis-

couraged the purchase thereof and attempted to sell and often did sell, the higher priced machine.

2. Many of the advertised products are not in respondent's stock of merchandise and they are not available for purchase.

3. Respondent's products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reduction from respondent's regular selling prices.

4. A finance company is involved in the financing of the customer's purchase and the customer's account is not handled by respondent's business.

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

PAR. 8. 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. 9. The aforesaid acts and practices of 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 heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in

the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Alan Libman is an individual doing business as Brand Stores, with his principal office and place of business located at 374 Massachusetts Avenue, in the city of Boston, State of Massachusetts.

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 Alan Libman, an individual, doing business as Brand Stores, or under any other trade 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. Using, in any manner, any advertisement, sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.

4. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Representing, directly or by implication, that advertised products are in stock and available for purchase: *Provided, however*, That it shall be a defense in any enforcement

proceeding instituted hereunder for respondent to establish that the advertised products were in stock and were available.

6. Representing, directly or by implication, that any price for respondent's products is a special 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 respondent in the recent regular course of his business, or misrepresenting in any manner the savings available to purchasers.

7. Representing, directly or by implication, that respondent finances his customer's installment contracts or notes or does not negotiate such notes to finance companies.

8. Failing to disclose orally at the time of sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(1) Such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party.

(2) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

9. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondent's products to purchasers; and failing to secure from each such person a signed statement acknowledging receipt of said order and agreeing to abide by the requirements of said order and to refrain from engaging in any of the acts or practices prohibited by said order; and for failure so to do, agreeing to dismissal or to the withholding of commissions, salaries and other remunerations or both to dismissal and to withholding of commissions, salaries and other remunerations.

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

BROOKPORT CLASSICS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING
ACTS

Docket C-1235. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City clothing manufacturer to cease misbranding its woolen car coats.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Brookport Classics, Inc., a corporation, and Jacques Schweitzer and Mac Savid, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Brookport Classics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Jacques Schweitzer and Mac Savid are officers of said corporation. They are responsible for and formulate the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (car coats) with their office and principal place of business located at 247 West 38th Street, New York, New York.

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated