

the manner and form in which he has complied with this order.

IN THE MATTER OF

WALTER DAN CROSS DOING BUSINESS AS
DELAWARE VALLEY SEWING CENTER

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

Docket C-1476. Complaint, Jan. 6, 1969—Decision, Jan. 6, 1969

Consent order requiring a Broomall, Pa., retailer of new and used sewing

Complaint

75 F.T.C.

machines to cease using bait advertisements, fictitious pricing and savings claims, and deceptive guarantees in the sale of its 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 Walter Dan Cross, an individual, formerly trading as Capitol Sewing Machine Sales of Delaware Valley, and now doing business as Delaware Valley 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 Walter Dan Cross is an individual formerly trading as Capitol Sewing Machine Sales of Delaware Valley, and now doing business as Delaware Valley Sewing Center, with his office and principal place of business located at 2908 West Chester Pike, in the city of Broomall, State of Pennsylvania. He has also used the name Capitol Sewing Machine Credit Department.

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, sewing machine cabinets and related products to the public.

PAR. 3. In the course and conduct of his business as aforesaid, 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 Pennsylvania 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 aforesaid business, and for the purpose of inducing the purchase of said products, respondent has made, and is now making, numerous statements and representations in the oral sales presentations by his salesmen to prospective purchasers and to purchasers and in advertisements inserted in newspapers of general circulation with respect to the kind, quality, prices, savings, guarantees and credits of his merchandise and the nature of his business.

Typical and illustrative of said statements and representations,

made in said newspaper advertisements, but not all inclusive thereof, are the following:

A 1967 SINGER ZIG ZAG cabinet model slightly used. Fancy stitches, over casts, blind hems, dresses, wind bobbins automatically, makes buttonholes, sews on buttons. No attachments needed. 5 year parts and services guaranteed. (BALANCE \$53.20)

or terms of \$5.10 per mo. Call Capitol Machine, Credit Dept. 658-2304 'TIL 9.

* * * * *

Sewing Machine 1967 Singer Console

Zig Zag slightly used, beautiful walnut cabinet, good condition, does everything without attachments (hems fancy stitches, buttonholes, monograms). Complete price \$64.90 or assume payments of \$6.25 monthly. For free home demo. call Capitol Sewing Machine credit manager til 9 p.m. 956-3314. If out of town call collect.

* * * * *

1966 Singer Zig-Zag. Cabinet Model 5 months old. Makes buttonholes, monograms, does fancy work with no attachments needed, blind hem stitches. 5 year parts and services.

UNPAID BALANCE—\$66.20

or terms of \$5.00 and \$5.00 per month. Call Capitol Machine Credit Dept. 377-2184. Call until 9 p.m U.F.N.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with oral statements and representations of his salesmen and representatives, respondent has represented, and is now representing, directly or by implication:

1. Through the use of the phrases and words "unpaid balance," "Balance," "assume payments" separately and in connection with the words "Credit Dept." and "credit manager" and other words and phrases of similar import, that sewing machines, partially paid for by a previous purchaser, have been repossessed and are being offered for sale for the unpaid balance of the purchase price.

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

3. That they are making a bona fide offer to sell repossessed sewing machines, as described in said advertisements, for reason of default in payment by the previous purchaser and on the terms and conditions stated.

4. Through the use of the phrases and words "cabinet," "cabinet model," "console model," and other words and phrases of

similar import, that purchase of the advertised sewing machine includes the cabinet.

5. That respondent's merchandise is being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondent's regular selling prices.

6. That the advertised machines are guaranteed for 5 years and that the new Domestic sewing machines are guaranteed for 20 years without limitation or condition.

PAR. 6. In truth and in fact:

1. In most instances, said products are not repossessed sewing machines being offered for the unpaid balance of the original purchase price.

2. Respondent's principal business is not that of lending money or providing credit to purchasers of merchandise or of buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit. Respondent is engaged in the business of retailing sewing machines and other products to the public.

3. Respondent is not making bona fide offers to sell repossessed sewing machines on the terms and conditions stated; but said offers are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondent or his salesmen call upon such persons but make no effort to sell said advertised sewing machines. Instead, they exhibit sewing machines which are in such poor condition as to be unusable or undesirable, and disparage the advertised product to discourage its purchase, and attempt, and frequently do, sell much higher priced sewing machines.

4. In most instances, the purchase of the advertised sewing machine does not include the cabinet but only the sewing machine head.

5. Respondent's merchandise is not being offered for sale at special or reduced prices, and savings are not thereby afforded respondent's customers because of a reduction from respondent's regular selling prices. In fact, respondent does not have a regular selling price but the price at which respondent's merchandise is sold varies from customer to customer depending upon the resistance of the prospective purchaser.

6. Said advertised machines and new Domestic sewing machines are not unconditionally guaranteed in every respect without limitation or condition for a period of five or twenty years,

respectively. Such guarantees as may be furnished in connection therewith, are subject to numerous terms, conditions and limitations and fail to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

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

PAR. 8. The use by 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 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 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Walter Dan Cross is an individual formerly trading as Capitol Sewing Machine Sales of Delaware Valley, and now doing business as Delaware Valley Sewing Center, with his principal office and place of business located at 2908 West Chester Pike, Broomall, Pennsylvania.

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 Walter Dan Cross, an individual, formerly trading as Capitol Sewing Machine Sales of Delaware Valley, and now doing business as Delaware Valley Sewing Center 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, sewing machine cabinets and related products or 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 sewing machines or other products have been repossessed or are being offered for sale for the unpaid balance of the original purchase price: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that said advertised products actually were repossessed and offered for sale and sold for the balance of the unpaid purchase price.

2. Representing, directly or by implication, that respondent is engaged in the business of lending money or providing credit to purchasers of merchandise or of buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit; or misrepresenting, in any manner, the nature or status of respondent's business.

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

4. Advertising or offering any product for sale, 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.

5. Disparaging, in any manner, or discouraging the purchase of any products advertised or displayed to prospective purchasers.

6. Representing, directly or by implication, that purchase of the advertised sewing machine includes a cabinet: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that a cabinet was included with purchase of the advertised sewing machine whenever such representation was made.

7. Misrepresenting, in any manner, the number or kind of units or parts or items included in any offer.

8. 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, that any savings or a stated amount of savings are available to purchasers.

9. Representing, directly or by implication, that respondent's products are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform there-

Complaint

75 F.T.C.

under are clearly and conspicuously disclosed in immediate conjunction therewith.

10. 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 respondent's products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

MARQUETTE CEMENT MANUFACTURING COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

*Docket 8685. Complaint, May 20, 1966—Decision, Jan. 7, 1969**

Order requiring the Nation's seventh largest manufacturer of portland cement with headquarters in Chicago, Ill., to divest itself of three affiliated ready-mixed concrete companies in the New York City area, which it acquired in 1964, and not to acquire any cement consumers for the next 10 years without prior approval of the Commission.

COMPLAINT**

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. §§ 18, 45, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

* Order staying effective date of final order and granting 30 days to reply to respondent's request to reopen record, issued April 1969.

Proceedings reopened and modified Sept. 8, 1969, 76 F.T.C. 361.

** Reported as amended by Hearing Examiner's order of June 26, 1967, by amending paragraphs 7, 8, and 10 of Part III, "so as to give effect to the fact that the acquisition by respondent of certain assets of Cooney Bros., Inc., also involved the assets of certain other companies controlled by the Cooney family, viz, Plaza Concrete Corporation and Mamaroneck Stone Corp."