

Complaint

IN THE MATTER OF

RICCAR AMERICA COMPANY, ET AL.

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

Docket C-1737. Complaint, May 4, 1970—Decision, May 4, 1970

Consent order requiring a Carlstadt, N.J., marketer of Japanese-made sewing machines to cease using bait and switch tactics, misrepresenting that its offers to sell are limited in time or to a limited number of persons, using deceptive discount schemes, misrepresenting that any article is "free," and furnishing others with means to deceive the public.

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 Riccar America Company, a corporation, and Harutoshi Yoshida and Kensaku Ogawa, individually and as officers of said corporation, and Leonard Trachtman, individually, hereinafter referred to as respondents, 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 Riccar America Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 191 Broad Street, in the city of Carlstadt, State of New Jersey.

Respondents Harutoshi Yoshida and Kensaku Ogawa are individuals and officers of the corporate respondent. They formulate direct and control the acts and practices of said respondent corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Leonard Trachtman is an individual and prior to March 31, 1967, was sales manager of the said corporate respondent. He participated with the said corporate officers in formulating, directing and controlling the acts and practices of the said respondent corporation, including the acts and practices hereinafter set forth. His address is 800 Boulevard East in the city of Weehawken, State of New Jersey.

PAR. 2. Respondents, except for respondent Leonard Trachtman, are hereinafter referred to as certain of the respondents, are now engaged in the advertising, offering for sale, sale and distribution of sewing machines, sewing machine cabinets and related products directly to the public through company operated retail outlets and to other retailers for resale to the public.

PAR. 3. In the course and conduct of their business, certain of the respondents now cause, and for some time last past the respondents have caused, their said products, to be imported into the United States from Japan, and, when sold, to be shipped from the States in which they are warehoused or otherwise stocked, to purchasers thereof located in various other States of the United States, other than the States from which such shipments originate, and further, respondents, as aforesaid, now cause, and have caused, promotional material to be prepared or processed by their distributors or at their central offices and distributed therefrom to their company operated retail outlets and to other retailers located in States other than the States in which said distributors or central offices are located, so that respondents have thereby maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. One of the respondents' sales plans has been to locate or to secure the location of registration boxes and display material in a high density traffic area, such as a shopping center, where persons are requested or invited to register for a drawing, offering as a prize a free sewing machine and cabinet. After the prize is awarded, respondents sell or otherwise distribute to their outlets or to independent retailers of their products, registration stubs identifying the names and addresses of registrants who failed to win. Such registrants are thereafter notified by letter of the location of a retail outlet where they can obtain an allegedly free sewing machine with the purchase of a cabinet. Upon the registrants' arrival at such locations, salesmen undertake to sell and, in many instances, do sell a higher priced machine to them.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and certain of the respondents are now making, certain statements and representations in magazine advertisements, promotional material and by other means with respect to drawings, sales promotions, free goods, limitations to product offers and merchandise prices.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

ENTRY BLANK

FREE DRAWING

Riccar Sewing Machine
(Complete with cabinet)

[Picture of a sewing machine with cabinet.]

Entry blank must be deposited in the registration box. Presence not required. Riccar employees and their families may not participate in the drawing.

Other registrants will be notified as to when and where to obtain a Riccar Sewing Machine for the price of a cabinet only. Choice of Models RW3 or RW7.

All entries must be hand-written or printed CLEARLY.

NAME _____

ADDRESS _____

CITY _____ STATE _____

NO SALESMAN WILL CALL

Dear . . . :

Your name was registered at the Philadelphia Home Show sewing machine drawing and you will receive a new Riccar 1966 Sewing Machine for the price of the cabinet only. You have a choice of two Models: Model RW 3 or Model RW 7.

You may select at no cost to you, either of the two Models listed above with the purchase of a cabinet at prices ranging from \$39.50 for the Model RW 3 and \$69.50 for the Model RW 7.

Thousands of dollars are spent in National advertising on radio, television and magazines. We believe, however, the best advertising is to place some of our machines into each community and let their quality advertise for themselves. All we ask of you is that you show your new machine to as many of your friends as possible.

When you come in to choose the machine and cabinet you prefer, please bring this letter for identification to * * *. If you are not in within one week another name will receive the new machine as we intend to place these machines as soon as possible.

Sincerely yours,
RICCAR AMERICA CO.

* * * * *
You don't have to be smart to sew with a RICCAR . . . but you are.

* * * * *
MODEL 306B—\$339.50*

* * * * *
MODEL 206B—\$269.50*

*Prices shown are for head only
CABINET ONLY \$79.50

PAR. 6. By and through the use of the aforementioned statements and representations, through oral statements by respondents' salesmen and by other written statements of similar import and meaning not specifically set out herein, respondents, as aforesaid, represent, and have represented, directly or by implication, that:

1. They are conducting bona fide contest registrations of persons eligible to purchase a sewing machine and cabinet for the price of the cabinet.

2. They are making bona fide offers to give the advertised sewing machines "free," that is, as a gift or gratuity without cost to purchasers of a sewing machine cabinet at respondents' regular retail selling prices as part of a bona fide advertising and promotional program.

3. Their said offers of a free sewing machine for the price of the cabinet are made only to a limited number of persons for a limited period of one week.

4. Their price of \$339.50 for their Model 306B sewing machine head, their price of \$269.50 for their Model 206B sewing machine head and their prices of \$69.50 and \$79.50 for certain of their cabinets are the prices at which the said articles of merchandise were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business.

PAR. 7. In truth and in fact:

1. Respondents were and are not conducting bona fide contest registrations of persons eligible to purchase a sewing machine and cabinet for the price of the cabinet. Their purpose in having persons register for drawings has been to obtain leads to prospective purchasers of their higher priced machines.

2. Respondents were and are not making bona fide offers to give the advertised sewing machines "free," that is, as a gift or gratuity without cost to purchasers of a sewing machine cabinet at respondents' regular retail selling prices as part of a bona fide advertising and promotional program. Furthermore, respondents' offers have been made to attract prospective purchasers of respondents' higher priced sewing machines, and the price of the cabinet includes all or part of the price of the machine.

3. Respondents' offers of a free sewing machine for the price of the cabinet were and are not made to only a limited number of persons but are made generally to prospective purchasers of sewing machines. Said offers have not been limited to one week but are available

beyond that period of time to recipients of respondents' promotional letters.

4. Their price of \$339.50 for their Model 306B sewing machine head, their price of \$269.50 for their Model 206B sewing machine head and their prices of \$69.50 and \$79.50 for certain of their cabinets were and are not the prices at which the said articles of merchandise were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business.

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

PAR. 8. In the course and conduct of their business, as aforesaid, and in furtherance of their deceptive sales program, respondents, as aforesaid, or respondents' salesmen or representatives have represented, and now represent, directly, or by implication, in oral and written statements to registrants, who are urged or persuaded to purchase one of respondents' higher priced machines rather than to accept the sewing machine-cabinet combination included in respondents' promotional offer, that registrants will be granted a discount or allowance, commensurate with the alleged value of said promotional offer, from the prices at which such higher priced sewing machines were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business and that a bona fide savings in the amount of such discount or allowance is thereby afforded such registrants.

PAR. 9. In few, if any, instances are registrants, who purchase one of respondents' higher priced machines, as aforesaid, granted a discount or allowance, as above described, from the prices at which such sewing machines were sold or offered for sale in good faith by the aforesaid respondents at retail for a reasonably substantial period of time in the recent, regular course of their business. Said higher amounts are fictitious, as alleged, and for this reason, savings in the amounts represented are not thereby afforded such registrants.

Therefore, the statements and representations, as set forth in Paragraph Eight hereof, were and are false, misleading and deceptive.

PAR. 10. The respondents, by and through the use of the aforesaid acts and practices, have placed in the hands of independent retailers of their products the means and instrumentalities by and through which said retailers may mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 11. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sewing machines, sewing machine cabinets and related products of the same general kind and nature as those sold by respondents.

PAR. 12. 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 such erroneous and mistaken belief.

PAR. 13. 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed agreements containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondents 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 considered the agreements and having accepted same, and the agreements containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreements, makes the following jurisdictional findings, and enters the following order:

1. Respondent Riccar America Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 191 Broad Street, in the city of Carlstadt, State of New Jersey.

Respondents Harutoshi Yoshida and Kensaku Ogawa are officers of the said corporation and their principal office and place of business are located at the above address.

Respondent Leonard Trachtman is an individual and former sales manager of the said corporation and his address is 800 Boulevard East, in the city of Weehawken, State of New Jersey.

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

ORDER

It is ordered, That respondents Riccar America Company, a corporation, and its officers, and Harutoshi Yoshida and Kensaku Ogawa, individually and as officers of said corporation, and Leonard Trachtman, individually, and respondents' agents, representatives, employees and any other person or company under the direction or control of respondents, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines, sewing machine cabinets or any other product or service, 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 persons are requested or invited to register or to submit their names, or to purchase or to receive any merchandise or service or to perform or participate in any act as a part of an advertising or promotional plan, when the primary purpose of such plan or promotion is other than as represented.

2. Representing, directly or by implication, that any product or service is offered for sale when such offer is not a bona fide offer to sell said product or service on the terms and conditions stated.

3. 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 their products or services.

4. Using any deceptive sales scheme or device to induce the sale of the products or services offered by respondents or by respondents' agents, representatives, employees, or by any other person or company under the direction or control of respondents.

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5. Representing, directly or by implication, that an offer of any product or service is: (a) limited as to time; (b) made to a limited number of persons; or (c) restricted or limited in any other manner, unless such represented limitations or restrictions were actually in force and in good faith adhered to.

6. Representing, directly or by implication, that any amount is respondents' usual and customary retail price for an article of merchandise or service when such amount is in excess of the price or prices at which such article of merchandise or service has been sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent regular course of their business.

7. Representing, directly or by implication, that any article of merchandise or service is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise or service, unless the stated price of the merchandise or service required to be purchased in order to obtain said merchandise or service is the same or less than the customary and usual price at which such merchandise or service has been sold separately for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

8. Representing, directly or by implication, that any saving, discount or allowance is given purchasers from respondents' selling price for a specified product or service, unless said selling price is the amount at which such product or service has been sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business.

9. Misrepresenting, in any manner, the prices at which respondents' products or services are sold at retail in any trading area by respondents or by their dealers or the savings afforded purchasers of their products.

10. Furnishing or otherwise placing in the hands of others any means or instrumentality by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

It is further ordered, That respondents, other than individual respondent, Leonard Trachtman, shall:

a. Transmit by registered or certified mail, return receipt requested, or otherwise deliver a copy of this order to cease and

desist to all present and future distributors and to all other persons or companies, that purchase products or services from respondents for resale, and to all salesmen and to any other person or company under the direction or control of respondents; and maintain a record of such delivery.

b. After the acceptance of initial report of compliance, submit a report to the Commission once every year, during the next three years, describing: (1) all complaints, received from the public respecting representations by respondents or by any person or company under the direction or control of respondents; (2) the facts uncovered by respondents in connection with any investigation made; and (3) the action taken by respondents with respect to each such complaint.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF

MASTER CHINCHILLA BREEDERS
ASSOCIATION, LTD., ET AL.

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

Docket C-1738. Complaint, May 6, 1970—Decision, May 6, 1970

Consent order requiring two Boulder, Colo., sellers of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality