

(60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF
CAPITOL SEWING MACHINE CORPORATION, ET AL.

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

Docket C-1852. Complaint, Jan. 21, 1971—Decision, Jan. 21 1971

Consent order requiring a Harrisburg, Pennsylvania, corporation which sells and services new and used sewing machines and franchises operators of similar businesses to cease misrepresenting that certain of its sewing machines offered for sale have been repossessed, using misleading statements to obtain leads to prospective purchasers, misrepresenting that any price for respondents' products is special, reduced or is a savings from the regular selling price, failing to maintain records which would support its savings claims, failing to disclose all aspects of its guarantees, placing in the hands of others means to mislead purchasers, failing to disclose to purchasers that any note may be sold to a finance company, and making any contract of sale which becomes binding prior to its third day.

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 Capitol Sewing Machine Corporation, a corporation, and Dennis R. LaVine, individually and as an officer of said corporation, 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. Capitol Sewing Machine Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 921 Eisenhower Boulevard, in the city of Harrisburg, State of Pennsylvania.

Respondent Dennis R. LaVine is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the granting of franchises to partnerships and individuals located in various States of the United States, to operate businesses specializing in the servicing, repair and sale of new and used sewing machines, sewing machine cabinets and related products to the public. Respondents also engage directly in the servicing, repair and sale of new and used sewing machines, sewing machine cabinets and related products to the public. In connection with the granting of said franchises to operate sewing machine dealerships, respondents require their franchisees to enter into agreements which require said franchisees to pay an initial sum of money for the privilege and said franchisees are required to purchase their sewing machines and related products from the respondents. Said franchisees are required to attend respondents' training course prior to commencing operation; are required to attend monthly meetings thereafter; to adhere at all times to respondents' advertising, sales and merchandising policies and procedures. Said franchisees' new salesmen are also trained for two weeks at the respondents' headquarters in Harrisburg and daily contact is maintained between the respondents and their franchisees via telephone. Respondents exercise, and at all times mentioned herein have exercised, a close and continuing supervision and control over the acts and practices of their franchisees as hereinafter described and those who fail to adhere to respondents' methods of operation may have their franchises terminated.

The manner in which respondents operate their sewing machine retail business is similar in all material respects to the manner of operation required of respondents' franchisees. The same classified newspaper advertisements are published throughout the franchise system.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, new and used sewing machines, sewing machine cabinets and related products thereto to be shipped from their place of business in the State of Pennsylvania to franchise dealers located in various other States of the United States. In the further course and conduct of their business, as aforesaid respondents transmit to and receive from their franchisees throughout the United States checks, contracts and other instrumentalities of a commercial nature.

In the further course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

In the course and conduct of their business as aforesaid, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of the products and services offered by respondents and their franchisees, respondents and their franchisees have made, and are now making, in advertisements inserted in newspapers of general circulation, numerous statements and representations with respect to the kind, quality, price, savings, guarantees and credit of their merchandise.

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

Singer zig-zag. Late Cabinet Model, slightly used, 5 yr. parts and service guaranteed, no attachments necessary sews button holes, fancy designs blind hems, and straight stitches. unpaid balance \$56.30 or pay payment of \$4.86 per month. Call Capitol Credit Manager till 9 p.m. 944-7461. If toll, call collect.

A domestic Zig Zag Sewing Machine, slightly used. Fancy stitches, sew on buttons, makes button holes. No attachments needed. 5 year parts guarantee & free service. Complete Price \$38.00 or pay payments of \$4.30 per month. Call Capitol Sewing Credit Manager 'til 9 p.m. 944-7461. If toll call collect.

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 respondents and their franchisees, and their salesmen and representatives, respondents and their franchisees have represented, and are now representing, directly or by implication, that:

(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, or a portion thereof.

(2) That they are making a bona fide offer to sell repossessed sewing machines as described in said advertisements, for reason of de-

fault in payment by the previous purchaser and on the terms and conditions stated.

(3) That respondents' merchandise is being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

(4) That the advertised machines are guaranteed for five years without limitation or condition.

PAR. 6. In truth and in fact:

(1) In few, if any, instances, are the advertised products repossessed sewing machines being offered for the unpaid balance of the original purchase price, or a portion thereof.

(2) Respondents are 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, respondents or their franchisees or their 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 unuseable or undesirable, and disparage the advertised product to discourage its purchase, and attempt, and frequently do, sell much higher priced sewing machines.

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

(4) Said advertised machines are not unconditionally guaranteed in every respect without limitations and conditions for a period of five years. 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 their business, respondents have in many instances failed to disclose certain material facts to purchasers, including, but not limited to the fact that, at respondents' option, conditional sales contracts, promissory notes, or other

instruments of indebtedness executed by such purchaser in connection with their credit purchase agreements may be discounted, negotiated, or assigned to a finance company or other third party to whom the purchaser is thereafter indebted and against whom defenses may not be available.

Therefore, respondents' failure to disclose such material facts, both orally and in writing prior to the time of sale, was and is false, misleading and deceptive, and constituted and now constitutes an unfair or deceptive act or practice.

PAR. 8. Directly and in the aforesaid manner and by the aforesaid means, respondents have placed in the hands of their franchisees, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove set forth.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents, directly and through their franchisees, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of sewing machines and other products 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 the products and services offered by respondents and their franchisees by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have 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 Capitol Sewing Machine Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 921 Eisenhower Boulevard, in the city of Harrisburg, State of Pennsylvania.

Respondent Dennis R. LaVine is an officer of said corporation and his office and principal place of business is located at the above-stated address.

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 Capitol Sewing Machine Corporation, a corporation, and its officers, and Dennis R. LaVine, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device or through policies or practices suggested or recommended by respondents to any licensee or franchisee, in connection with the advertising, offering for sale, sale or distribution of sewing machines, sewing machine cabinets and related 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 related products have been repossessed or in any manner reacquired from a former purchaser, or are being offered for sale for the unpaid balance, or any portion thereof, of the original purchase price, or for the amount or any portion of the amount owed by a former purchaser, unless said advertised products actually were of the character stated and were offered for sale on the terms and conditions represented.
2. Representing, directly or by implication, that sewing machines or related 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 said merchandise.
3. Advertising or offering for sale any sewing machine or related product unless respondent has, makes a good faith effort to demonstrate, and offers for sale to prospective purchasers, without disparaging or in any manner discouraging its purchase, a product which conforms to the representations and descriptions contained in the advertisement or offer.
4. Using any deceptive sales scheme or device to induce the sale of the products or services offered by respondents or their franchisees.
5. Representing, directly or by implication, that any price for respondents' 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 respondents in the recent regular course of their business.
6. Representing, directly or by implication, that any savings, discount or allowance is given purchasers from respondents' selling price for specified products, unless said selling price is the amount at which such products have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business.
7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.
8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representa-

tions of the type described in Paragraphs 5 through 7 of this order are based, and

(b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5 through 7 of this order can be determined.

9. Representing, directly or by implication, that respondents' 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 thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

10. Placing in the hands of others any means or instrumentalities whereby they may mislead purchasers or prospective purchasers as to any of the matters or things prohibited in Paragraphs 1 through 9 hereof.

11. Failing to orally disclose prior to the time of sale, and in writing on any conditional sale contract, or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

12. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after date of execution.

13. Failing to serve a copy of this order upon each present and every future licensee or franchisee and obtaining written acknowledgement of the receipt thereof and from failing to make every reasonable effort to obtain from each present and every future licensee or franchisee an agreement in writing to abide by the terms of this order.

It is further ordered, That the respondent corporation:

(1) Shall forthwith distribute a copy of this order to each of its operating divisions.

(2) Notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corpo-

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ration, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the 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 this order.