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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

ERNEST J. KROHSE TRADING AS ERNIE'S SEWING
CENTER

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

Docket C-1949. Complaint, June 25, 1971—Decision, June 25, 1971

Consent order requiring a Sioux Falls, S. Dak., individual selling and distributing new and used sewing machines, vacuum cleaners and other products to cease conducting misleading contest, making deceptive pricing claims, misrepresenting guarantees, failing to maintain adequate records, using bait selling tactics, failing to disclose that a customer's note may be assigned to a finance company and using other unfair selling practices.

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 Ernest J. Krohse, an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, 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 Ernest J. Krohse is an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Ceter of Sioux Falls, with his principal place of business located at 702 West 11th Street in the city of Sioux Falls, State of South Dakota.

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, vacuum cleaners and other 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 merchandise, when sold, to be shipped or delivered from his place of business in the State of South Dakota to purchasers thereof located in other States of the United States and has been and now is engaged in causing to be disseminated in newspapers of interstate circulation and by the United States mails, advertisements designed and intended to induce sales of his merchandise, and thereby maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. One of respondent's sales plans is to sponsor a drawing at a high density traffic area where persons are requested or invited to register for a drawing, offering as a prize a free sewing machine. After the free prize is awarded, participants in the drawing and other persons receive from respondent a letter enclosing a discount certificate of specified monetary value to be applied to the purchase of one of respondent's sewing machines or vacuum cleaners. Although respondent advertises low price merchandise in such letters and in his newspaper advertisements, respondent or his salesmen undertake to sell and, in many instances, do sell higher priced merchandise to customers, who respond to such offers.

PAR. 5. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his merchandise, respondent has made, and is now making, numerous statements and representations in letters, newspapers and other media with respect to his contests, drawings, prizes, promotions, prices, limitations to offers, the characteristics and guarantees of his merchandise.

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

A. In connection with respondent's contests or drawings:

ENTRY BLANK FOR DRAWING ON
NECCHI Sewing Machine

Name _____
Address _____ Phone _____

Drop this in Entry Box

* * * * *

CONGRATULATIONS!

Your name was selected in a random drawing to receive this \$110.00 Discount Certificate. . . . This Discount Certificate may be applied to any model sewing machine from our entire stock of new sewing machines.

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EXAMPLE: A L C O SEWING MACHINE \$159.95
 LESS: DISCOUNT CERTIFICATE 110.00
 Leaves only this small balance 49.95

This Discount Certificate is valuable

Please note that this is an advertising offer which is limited to ten (10) days or one demonstration. THIS CERTIFICATE MAY BE APPLIED TO THE PURCHASE OF A NEW VACUUM CLEANER FROM OUR STOCK.

B. In connection with respondent's newspaper advertisements of sewing machines:

CLOSE-OUT 1968 models. . . . Necchi portable, reg. \$229.95. . . . Now only \$115.00. . . .

* * * * *
 FOR SALE: Singer portable sewing machine . . . \$25 * *

* * * * *
 FOR SALE: Wards console sewing machine . . . \$29 * *

* * * * *
 FOR SALE: . . . Necchi super Nova sewing machine, completely automatic, full guarantee, . . .

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not specifically set out herein, separately and in conjunction with oral sales presentations by respondent or by respondent's salesmen, respondent has represented, and is now representing, directly or by implication, that:

1. He is conducting a bona fide contest and a bona fide drawing to determine the winner of a new sewing machine.
2. He is conducting a bona fide game of chance by a random drawing and that in connection therewith, he is awarding a valuable prize of a discount certificate in the amount of a \$110 as a credit or allowance to be deducted from the regular retail price of one of his new sewing machines or new vacuum cleaners.
3. His said award of a discount certificate is made only to a limited number of selected persons for one demonstration or for a limited period of ten days.
4. His aforestated prices of \$159.95 for the A L C O sewing machine and \$229.95 for the 1968 model Necchi portable sewing machine are the prices at which these sewing machines were sold or offered for sale in good faith by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.
5. He is making bona fide offers to sell sewing machines for \$25 and \$29 and various other low prices not set out herein.

6. The Necchi super Nova sewing machine operates automatically, by self-operation and by self-regulation.

7. The Necchi super Nova sewing machine is guaranteed without condition or limitation.

PAR. 7. In truth and in fact:

1. Respondent is not conducting a bona fide contest or a bona fide drawing to determine the winner of a new sewing machine. His main purpose in conducting such a contest and drawing is to determine the identity of persons interested in purchasing a new sewing machine.

2. Respondent is not conducting a bona fide game of chance by a random drawing and in connection therewith, respondent is not awarding a valuable prize of a discount certificate in the amount of \$110 as a credit or allowance to be deducted from the regular retail price of one of his new sewing machines or new vacuum cleaners. Such a credit or allowance, granted pursuant to the said game of chance, is awarded to all contest participants who failed to win respondent's new sewing machine and to numerous other persons and is not deducted from respondent's regular retail price for one of his new sewing machines or new vacuum cleaners but from a fictitious higher price and therefore, such a prize is illusory.

3. Respondent's awards of credits or allowances were not made only to limited number of selected persons but were made generally to members of the purchasing public. Said offers were not limited to one demonstration or to ten days but were available for additional demonstrations and after the ten day period of time.

4. Respondent's prices of \$159.95 for the A L C O sewing machine or \$229.95 for the 1968 model Necchi portable sewing machine are not the prices at which these sewing machines were sold or offered in good faith for sale by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

5. Respondent's advertised offers of sewing machines for \$25, \$29 and various other low prices not set out herein are not bona fide offers but are made for the purpose of obtaining leads to persons interested in the purchase of sewing machines. After obtaining these leads through responses to the said advertisements, respondent or his salesmen call upon such persons but make no effort to sell the advertised machine. Instead they exhibit what they represent to be the advertised machine which, because of its poor appearance and condition is usually rejected on sight by the prospective purchaser. Concurrently, one or more higher priced sewing machines of superior appearance and condition are presented, which by comparison

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disparage and demean the advertised sewing machine. By these and other tactics, the purchase of the advertised sewing machine is discouraged, and respondent or his salesmen attempt to and frequently do sell a higher priced machine.

6. The Necchi super Nova sewing machine does not operate automatically, by self-operation or by self-regulation.

7. The guarantee of the Necchi super Nova sewing machine is subject to numerous conditions and limitations which are not disclosed in respondent's advertising.

Therefore, that 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 his aforesaid business, respondent and his salesmen have, in many instances, failed to disclose orally or in writing certain material facts to purchasers, including, but not limited to the fact that, at respondent's option, conditional sales contracts, promissory notes or other instruments of indebtedness executed by such purchasers in connection with their credit purchase agreements may be discounted, negotiated or assigned to a finance company or other third party against whom defenses may not be available.

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

PAR. 9. By and through the use of the aforesaid acts and practices, respondent places in the hands of salesmen 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 alleged.

PAR. 10. 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 in the sale of sewing machines and other merchandise of the same general kind and nature as those sold by respondent.

PAR. 11. 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 the merchandise and services offered by respondent by reason of said erroneous and mistaken belief.

PAR. 12. 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 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 Consumer Protection 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 and having duly considered the comments filed thereafter, 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 Ernest J. Krohse is an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, with his principal place of business located at 702 West 11th Street in the city of Sioux Falls, State of South Dakota.

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 Ernest J. Krohse, an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, 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 or other products or services 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 names of winners are obtained through drawings, contests or by chance when all of the names selected are not chosen by lot; or misrepresenting, in any manner, the method by which names are selected.

2. Representing, directly or by implication, that a drawing or other type of game of chance is being conducted to determine a winner or winners of a prize or prizes, unless such drawing or other type of game of chance is in fact designed to select a winner or winners of a bona fide prize or prizes.

3. Representing, directly or by implication, that awards or prizes are of a certain value or worth when recipients thereof are not in fact benefited by or do not save the amount of the represented value of such awards or prizes.

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

5. Representing, directly or by implication, that any savings, discount, credit or allowance is given purchasers as a reduction from respondent's selling price for a specified article of merchandise, product or service unless such selling price is the amount at which said article of merchandise, product or service has been sold or offered for sale in good faith by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

6. 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 representations of the type described in Paragraphs 3 through 5 of this

order are based, and (b) from which the validity of any savings claims and comparative value claims, and similar representations of the type described in Paragraphs 3 through 5 of this order are based, and (b) from which the validity of any savings claims and comparative value claims, and similar representations of the type described in Paragraphs 3 through 5 of this order can be determined.

7. Representing, directly or by implication, that an offer of any article of merchandise, 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.

8. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered and respondent maintains an adequate and readily available stock of said products.

9. Disparaging in any manner or refusing to sell any product advertised.

10. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other merchandise.

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

12. Using the word "automatic" or any other word or term of similar import or meaning to describe any sewing machine either in its entirety or as to its over-all function or operation, or using any illustration or depiction which represents that such a machine is automatic in its entirety or as to its over-all function or operation; *Provided, however*, That nothing herein shall be construed to prohibit the use of the word or term "automatic" in describing a sewing machine's specific attachment or component or function thereof, which after activation and by self-operation, will perform without human intervention the mechanical function indicated.

13. 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 thereunder are clearly and

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conspicuously disclosed in immediate conjunction therewith; and unless respondent does in fact promptly perform each of his obligations directly or impliedly represented under the terms of such guarantee.

14. Failing to disclose orally prior to the time of sale of any article of merchandise, product or service that an instrument of indebtedness executed by a purchaser may, at respondent's option and without notice to the purchaser, 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.

15. Failing to incorporate the following statement on the face of all contracts involving credit extension executed by respondent's customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

IMPORTANT NOTICE

If you are obtaining credit in connection with this contract, you may be required to sign a promissory note. This note may be purchased by a bank, finance company or any other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of the note. You should be aware that if this happens you may have to pay the note in full to the new owner of the note even if this contract is not fulfilled.

16. Contracting for any sale, whether in the form of a 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.

17. 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 by this order.

It is further ordered, That the respondent herein shall forthwith 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 merchandise, products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation

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or sale resulting in the emergence of a successor corporation or partnership or any other change which may effect compliance obligations arising out of this 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.
