

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1971, TO
DECEMBER 31, 1971

IN THE MATTER OF

GERALD BLANCHARD TRADING AS DOMESTIC SEWING
CENTER

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

Docket C-1966. Complaint, July 7, 1971—Decision, July 7, 1971

Consent order requiring a Memphis, Tenn., individual selling and distributing new and used sewing machines and other merchandise to cease using deceptive games of chance, misrepresenting the customary retail price of his merchandise, failing to maintain records to support savings claims, using "bait" methods of selling, implying that articles offered for sale have been repossessed, misusing the word "automatic" to describe any sewing machine, falsely guaranteeing any of his products, failing to notify purchaser that his promissory note may be discounted to a finance company, and making any sales or credit instrument which shall become effective prior to midnight of the third day after execution.

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 Gerald Blanchard, an individual, trading and doing business as Domestic Sewing Center, and formerly trading and doing business as National Electronics and as National Electronics Distributors, 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 Gerald Blanchard is an individual,

Complaint

79 F.T.C.

trading and doing business as Domestic Sewing Center with his principal place of business located at 3290 Commercial Parkway in the city of Memphis, State of Tennessee, and formerly trading and doing business as National Electronics and as National Electronics Distributors with his principal place of business located at 468 North Watkins Street in the city of Memphis, State of Tennessee.

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 and other merchandise to the public and was formerly engaged in the advertising, offering for sale, sale and distribution of stereo sets, television sets, record albums and similar merchandise 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 from his places of business in the State of Tennessee to purchasers thereof located in various other States of the United States and has been, and now is, engaged in causing to be disseminated in newspapers of interstate circulation, by the United States mails and radio commercials of interstate transmission, 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 invite persons to register for a drawing, offering as a prize a new sewing machine. After this prize is awarded, registrants in the drawing receive from respondent a letter offering an opportunity to win a credit or allowance of specific monetary value to be applied to the purchase of a sewing machine by their participation in a lucky number contest. Although respondent advertises low price merchandise in this letter and other letters, in newspaper ads and radio commercials, 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 drawings, contests, games of chance, prizes, promotions, prices, savings, limitations to offers, the status, kind, quality, characteristics and guarantees of his merchandise.

1

Complaint

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

A. In connection with respondent's contests, drawings or games of chance:

Thank you for entering our recent drawing.

You have been chosen to receive a 1969 Deluxe Zig Zag Sewing Machine.

* * *

* * * * *

Lucky Number
Pull Tab

Congratulations:

You have been selected to participate in the all new

DOMESTIC SWEEPSTAKES

HERE is your opportunity. Compare the serial number on your letter against the enclosed list of lucky numbers by removing the tab. It may mean extra savings to you.

Your letter may be used toward the purchase of the famous DOMESTIC MODEL ROBIN 164 SEWING MACHINE. * * * It is especially priced at \$149.00.

Here is an example of your savings if your serial number appears in group number 3 (GRAND PRIZE). You pay only \$9.95 for the machine itself (freight and set-up cost) and take out our new 5-year service and instructional policy at a cost of \$12.95 per year. * * *

Group No. 1 winners are eligible for \$59.95 discount on any machine, and Group No. 2, \$29.95.

Since this is an advertising promotion, the time limit offer is good only for one (1) demonstration or 10 days.

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

1969 Singer in walnut cabinet (good shape). Makes zig zag stitches automatically * * * Guaranteed. Assume monthly notes of \$5.21 or pay total finance bill of \$53.12.

* * * * *

1969 Zig Zag in nice console . . . Assume notes of \$1.50 per week or pay final balance of \$34.75.

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's salesmen to purchasers and prospective purchasers, respondent has represented, and is now representing, directly or by implication:

A. In connection with respondent's contests, drawings or games of chance:

1. That he is conducting bona fide drawings and bona fide contests to determine the identity of persons eligible to purchase his merchandise at reduced or discount prices.

Complaint

79 F.T.C.

2. That his Domestic Sweepstakes is a bona fide game of chance and that in connection therewith, he is awarding valuable prizes of specific amounts, such as the aforesaid \$59.95 and \$29.95, as credits or allowances to be deducted from his regular price of any sewing machine he sells and a valuable grand prize, which entitles the winner thereof to purchase a Domestic Model Robin 164 sewing machine and a 5-year service and instructional policy at a bargain price of \$9.95 plus \$12.95 per year for 5 years.

3. That his aforestated price of \$149 for the Domestic Model Robin 164 sewing machine is the price at which it was 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.

4. By use of the words "extra savings," "example of your savings" or other words or word of similar import or meaning, that respondent's offering prices for certain sewing machines constitutes a substantial reduction from a higher price or prices at which such 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 and that the difference between such higher price or prices and the corresponding lower offering price or prices for the said machines represents a savings to the purchaser.

5. That his said awards of credits or allowances are made only to a limited number of selected persons for one demonstration or for a limited period of ten days.

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

1. That he is making bona fide offers to sell used sewing machines for \$53.12, \$34.75 and various other prices not set out herein.

2. Through the use of the statements, "assume monthly notes" "pay total finance bill" and statements or words of similar import or meaning, that sewing machines, partially paid for by the previous purchaser, are being offered for sale by respondent for the unpaid balance of the purchase price.

3. That the 1969 Singer sewing machine makes zig zag stitches automatically, by self-operation and by self-regulation.

4. That the 1969 Singer sewing machine is guaranteed without condition or limitation.

PAR. 7. In truth and in fact:

A. In connection with respondent's contests, drawings or games of chance:

1. Respondent is not conducting bona fide drawings or bona fide

contests to determine the identity of persons eligible to purchase his merchandise at reduced or discount prices. His purpose in conducting such drawings and contests is to attract prospective purchasers of his higher priced merchandise.

2. Respondent's Domestic Sweepstakes is not a bona fide game of chance and in connection therewith, respondent does not award valuable prizes of specific amounts, such as \$59.95 or \$29.95, as credits or allowances to be deducted from his regular price of any sewing machine he sells, nor does his grand prize entitle a winner thereof to purchase a Domestic Model Robin 164 sewing machine and a 5-year service and instructional policy at a bargain price of \$9.95 plus \$12.95 per year for 5 years. Such credits or allowances, granted pursuant to the said promotional program and a similar program conducted by respondent, are awarded to all contest participants who failed to win respondent's new sewing machine and are not deducted from respondent's regular retail prices for his sewing machines but from fictitious higher prices and therefore, such prizes are illusory. Moreover, a purchaser of respondent's 5-year service and instructional policy must pay a total sum of \$64.75 at the time of accepting his offer rather than \$12.95 each year for 5 years.

3. Respondent's price of \$149 for the Domestic Model Robin 164 sewing machine is not the price at which it was 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 but is considerably in excess of that price.

4. The prices referred to in respondent's offers of sewing machines in connection with the words "extra savings," "example of your savings" or other words or word of similar import or meaning do not constitute a substantial reduction from a higher price or prices at which such 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 and purchasers are not afforded savings between such higher price or prices and the corresponding lower offering price or prices for the said machines.

5. Respondent's awards of credits or allowances were not made only to a 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.

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

1. Respondent's advertised offers of used sewing machines for

Complaint

79 F.T.C.

\$53.12, \$34.75 and various other 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 sewing machine. Instead they exhibit what they represent to be the advertised sewing machine which, because of its poor appearance and condition, is usually rejected on sight by the prospective purchaser. Concurrently, a higher priced sewing machine of superior appearance and condition is presented, which by comparison disparages and demeans the advertised machine. By these and other tactics, the purchase of the advertised machine is discouraged, and respondent or his salesmen attempt to and frequently do sell the higher priced machine.

2. Respondent's sewing machines, offered by use of the statements "assume monthly notes" or "pay total finance bill" and statements or words of similar import or meaning, are not partially paid for by the previous purchaser nor are they being offered for sale by the respondent for the unpaid balance of the purchase price.

3. The 1969 Singer sewing machine does not make zig zag stitches automatically, by self-operation or by self-regulation.

4. The guarantee of the 1969 Singer sewing machine is subject to numerous conditions and limitations which are not disclosed in respondent's advertising.

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 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 to whom the purchaser is thereafter indebted and 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, 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 Gerald Blanchard is an individual, trading and doing business as Domestic Sewing Center, with his principal place of business located at 3290 Commercial Parkway in the city of Memphis, State of Tennessee and formerly trading and doing business as National Electronics and as National Electronics Distributors, with his principal place of business located at 468 North Watkins Street in the city of Memphis, State of Tennessee.

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 Gerald Blanchard, an individual, trading and doing business as Domestic Sewing Center, and formerly trading and doing business as National Electronics and as National Electronics Distributors 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 sweepstakes or other type of game of chance is being conducted to determine a winner or winners of a prize or prizes, unless such sweepstakes 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. Using the words "extra savings," "example of your savings" or any other words or word of similar import or meaning as descriptive of any price amount: *Provided, however*, That nothing herein shall be construed to prohibit the use of such words or word where such price constitutes a substantial reduction from the price at which an article of merchandise, product or service was 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.

7. 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 6 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 6 of this order can be determined.

8. 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.

9. 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.

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

11. 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.

12. 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.

13. Representing, directly or by implication, that any article of merchandise or product has been repossessed, has been partially paid for by the previous purchaser or is being offered for sale for the unpaid balance of the purchase price, unless such representations are true and factual; or misrepresenting, in any manner, the status, kind, quality or price of an article of merchandise or product being offered.

14. 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.

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

16. 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.

17. Failing to obtain their customers' signed statement saying that they have received, read and understood the following:

"Important Notice"

"If you are obtaining credit in connection with this contract, you will 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."

18. (a) Contracting for any credit 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.

(b) Negotiating any conditional sales contract, promissory note, trade acceptance, or other instrument of indebtedness to a finance company or other third party prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution by the buyer.

19. 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 within fifteen (15) days subsequent to any change in this business organization such as dissolution, assignment, incorporation or sale resulting in the emergence of a successor corporation or partnership or any other change which may affect 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 statement in detail the manner