

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

Docket C-2104. Complaint, Nov. 18, 1971—Decision, Nov. 18, 1971

Consent order requiring a retailer of sewing machines of Miami, Fla., to cease using false pricing, contest and guarantee claims, and other deceptive 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 Abbey Domestic Corporation, a corporation, doing business as Abbey Domestic Sewing Center, Inc., and Erwin Dearman and Albert Behar, individually and as officers 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. Respondent Abbey Domestic Corporation, doing business as Abbey Domestic Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 12173 N.W. 7th Avenue, in the city of North Miami, State of Florida.

Respondents Erwin Dearman and Albert Behar are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their 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 advertising, offering for sale, sale and distribution of sewing machines and other products to the public.

PAR. 3. In the 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 Florida to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Basically, respondents' sales plan has been, and currently is, to have puzzles published in magazines and newspapers and to request that such puzzles to be solved and returned to them for entry in a drawing, awarding as prizes a free sewing machine, several other free prizes of less monetary value than the free sewing machine or a discount certificate. After the said free prizes have been awarded on the basis of a drawing of puzzle entries, respondents mail to persons, who failed to win one of the same, a letter notifying them that their puzzle entry has been selected for an award of an enclosed discount certificate, stating a specified monetary amount that may be used in reducing the represented price of one of respondents' sewing machines, as pictured and otherwise described in a likewise enclosed advertisement.

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 are now making numerous statements and representations in newspapers, magazines, promotional material and by other means with respect to the prices, contests, promotional programs, prizes, characteristics and guarantees of their merchandise.

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

WIN a new \$229.95 zig zag sewing machine. All told, we're giving away over \$5,000 in prizes, free.

* * * * *

SELECTED FOR AWARD

Congratulations,

We have issued a coupon in your name for entering our recent win a Dressmaker sewing machine contest.

Your enclosed personal coupon gives you the right to purchase the \$229.95 Comparable Value De Luxe Dressmaker Zig Zag sewing machine for the low, low price of \$79.95.

FOR EXAMPLE:

Deluxe zig zag machine that makes zig zag and fancy stitches

Model 290 Comparable value-----	\$229. 95
Less Discount Certificate-----	150. 00

Your Total Cost Only-----	79. 95
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The Dressmaker sewing machine comes complete with a 25 year guarantee bond.

These are the very same machines advertised in leading magazines and national newspapers.

Our Dressmaker Zig Zag sewing machines are used by students in the Home Economics departments of High Schools throughout the country.

I understand I have a satisfaction or refund of money guarantee, and if not completely satisfied I may return merchandise for full refund.

* * * * *

After this coupon expires, price of the #290 at our retail store or by mail order will be \$229.95.

PAR. 6. 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, the respondents have represented, and are now representing, directly or by implication, that:

1. Through the use of the words "compare at," "comparable value" and "value" the price of \$229.95 is the price at which a product of like grade and quality is usually and regularly sold at retail in the trade area where the representation is made, and that purchasers of respondents' product would realize a savings of the difference between that price and their selling price of \$79.95.

2. They have made a bona fide offer to sell, or have regularly sold, the Dressmaker Model 290 sewing machine for the price of \$229.95 on a regular basis for a reasonably substantial period of time in the recent, regular course of their business, and that after the expiration date of their coupon offer, the Model 290 sewing machine will be sold at retail for the price of \$229.95.

3. With respect to award winners of their discount certificate, they have conducted a bona fide contest.

4. Recipients of their discount certificate have been awarded a valuable prize, entitling them to a discount in the amount of \$150 as a reduction from the price at which the Model 290 Dressmaker Sewing Machine is usually and customarily sold by respondents, or as a reduction from the price at which sewing machines of like grade and quality are usually sold at retail in respondents' trade area or areas.

5. They have conducted a bona fide contest whereby \$5,000 in prizes was awarded to entrants therein.

6. The Dressmaker Model 290 Sewing Machine is guaranteed for 25 years without condition or limitation.

7. They have posted a bond or have established a reserve fund, the benefits of which are available to the recipients of their guarantee.

8. The Dressmaker Model 290 Sewing Machine is advertised in leading magazines and national newspapers.

9. The Dressmaker Model 290 Sewing Machines are used by students in the Home Economics departments of high schools throughout the country.

10. That winners of sewing machines in respondents' contests receive them without incurring any expenses related thereto.

PAR. 7. In truth and in fact:

1. A product of like grade and quality is not usually and customarily sold at retail in the trade area or areas where the representation is made at a price of \$229.95, and purchasers of respondents' product would not realize a saving of the difference between the said higher and lower price amounts.

2. Respondents have not made a bona fide offer to sell, nor have they sold, the Dressmaker Model 290 Sewing Machine at a price of \$229.95 either before or after the expiration of their discount certificate.

3. Respondents have not conducted a bona fide contest with respect to persons awarded their discount certificate. Such discount certificates are awarded to all contest participants who did not win one of their limited number of merchandise prizes.

4. Recipients of respondents' discount certificates have not been awarded a valuable prize, since the \$150 amount of said discount certificate is deducted not from respondents' usual and customary price, for the Dressmaker Model 290 Sewing Machine, or from the price at which sewing machines of like grade and quality are usually sold at retail in respondents' trade area or areas, but from a fictitious higher price, as herein alleged, and therefore the value of the discount certificate is illusory.

5. Respondents did not conduct a contest whereby \$5,000 in prizes were given away to participants.

6. The twenty-five (25) year guarantee of the Dressmaker Model 290 Sewing Machine is subject to numerous conditions and limitations, which are not disclosed in respondents' advertising.

7. Respondents have not posted a bond nor have they established a reserve fund, the benefits of which are available to recipients of their guarantees.

8. The Dressmaker Model 290 Sewing Machine is not advertised in leading magazines and national newspapers.

9. The Dressmaker Model 290 Sewing Machines are not used by students in the Home Economics departments of high schools throughout the country.

10. Winners of sewing machines in respondents' contests do not receive them without incurring expenses related thereto, since winners are required to pay shipping charges.

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

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for sewing machines by the general public, respondents and their representatives directly or indirectly have engaged in the following acts and practices:

1. Shipped sewing machines collect on delivery to purchasers thereof without disclosing in the advertisements or other promotional materials that purchasers are required to pay all shipping costs.

2. Advertised and offered for sale a Dressmaker Model 290 Sewing Machine and upon receipt of orders for these machines shipped C.O.D. other and different machines in lieu of the Dressmaker Model 290 without notice to the customer, thereby causing customers to pay the cost and shipping charges on machines other than the machines ordered.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are unfair, false, misleading and deceptive acts and practices.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals 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 unfair, false, misleading and deceptive statements, representations and practices and

their failure to disclose material facts, as aforesaid, 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 complete, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. 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 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 Atlanta Regional Office 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 respondents have violated the said Acts, 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Abbey Domestic Corporation is a corporation doing business as Abbey Domestic Sewing Center, Inc., organized, existing and doing business under and by virtue of the laws of the State of

Florida with its principal offices and place of business located at 12173 Northwest 7th Avenue, in the city of North Miami, State of Florida.

Respondents Erwin Dearman and Albert Behar are officers of said corporation and their principal offices and place of business are located at the above address.

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

ORDER

It is ordered, That respondents Abbey Domestic Corporation, a corporation, doing business as Abbey Domestic Sewing Center, Inc., and its officers, and Erwin Dearman and Albert Behar, individually and as officers of said corporation, and respondents' 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents' product is of a value comparable to any other product retailing at a higher price unless the merchandise to which their product is compared is at least of like grade and quality in all material respects and is generally available for purchase at the comparative price in the same trade area or areas where the claim is made.

2. 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.

3. Representing, directly or by implication, that any savings is afforded in the purchase of respondents' product as compared to the purchase of another product unless the merchandise to which respondents' product is compared is at least of like grade and quality in all material respects and is generally available for purchase at the comparative price in the same trade area or areas in which the claim is made.

4. Representing, directly or by implication, that any savings, discount, credit or allowance is given to purchasers as a reduction from respondents' selling price for a specified product unless such

selling price is the amount at which said product 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.

5. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices and the usual and customary prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 3, 4 and 8 of this order are based, and from which the validity of such claim can be established.

6. Represent, 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 nature or purpose of a contest.

7. Using any advertising, promotional program or procedure involving the use of false, deceptive or misleading statements to obtain leads or prospects for the sale of their products.

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

9. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

10. Representing, directly or by implication, that respondents have posted a bond or have established a reserve fund, the benefits of which are available to recipients of their guarantees, unless respondents do in fact have such a bond or fund available and unless the said bond or fund is available to all recipients of their guarantee.

11. Representing, directly or by implication, that winners of their contests, or drawings, will receive any product or service free, as a gift, without cost, or charge, when the winners are required to pay shipping cost, or other cost related thereto for the free product, service or gift.

12. Representing, directly or by implication, that any of respondents' products have been used, exhibited, featured, or advertised to any extent, or in any manner, unless such is the fact.

13. Failing to disclose in all advertisements, promotional ma-

terials, order forms, or any other document utilized to solicit orders for respondents' product, that the product will be shipped C.O.D. and that the purchaser thereof will be required to pay all shipping costs.

14. Substituting at any time a product other than the advertised, promoted, and ordered product of respondents without first providing the purchaser in writing with an option to cancel his order for the product for which substitution is sought to be made.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondents engaged in the sale of sewing machines or other products or in any aspect of preparation, creation or placing of advertising, and that respondents' secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in corporate respondent's business organization such as dissolution; assignment or sale resulting in the emergence of a successor business, corporate or otherwise; the creation of subsidiaries; any change of business name or trade style; or any other change 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.

IN THE MATTER OF

PENASQUITOS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS