

Complaint

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IN THE MATTER OF
SEWING DISTRIBUTORS, INC., ET AL.

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

Docket 8881. Complaint, March 29, 1972—Decision, Feb. 15, 1973.

Consent order requiring a Phoenix, Arizona, seller and distributor of sewing machines, among other things to cease misrepresenting prices at which articles of merchandise have been sold in respondents' trade area; misrepresenting prices as usual and customary; failing to maintain adequate records on which various representations are based; misrepresenting the nature or purpose of any contest schemes; and misrepresenting any discount, credit, or allowances given as reductions from specified selling prices.

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 Sewing Distributors, Inc., a corporation, and John P. Rooney, 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. Respondent Sewing Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 526 East Dunlap, in the city of Phoenix, State of Arizona.

Respondent John P. Rooney is an individual and 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 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 supplier in the State of California to purchasers thereof located in various

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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, to mail puzzles to numerous persons and to request that such puzzles 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 won for them 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 customer savings and the value, 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:

YOU CAN OWN this beautiful sewing machine at a big savings

Model 408	\$229.95
Complete Portable	Value

* * * * *

Congratulations,

The judges have selected your entry as a second prize winner in our recent Smart Money newspaper contest.

The enclosed \$150.00 Discount Certificate is the prize you have won. This certificate is good toward the purchase of the \$229.95 Deluxe Dressmaker 24 cam, Zig Zag sewing machine.

FOR EXAMPLE:

Deluxe 24 cam machine that makes Zig Zag and Fancy Stitches automatically

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Model 408 Regular Price	\$229.95
Less Discount Certificate	150.00
Your Total Machine Cost Only	\$ 79.95

The Dressmaker sewing machines . . . have a 25 year guarantee bond.

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. The price of \$229.95, accompanied by the word "value," or by any other word or words of similar import and meaning, is a price which does not appreciably exceed the price at which substantial sales of the Model 408 sewing machine were made in respondents' trade areas.

2. Purchasers of the Model 408 sewing machine will save an amount equal to the difference between \$229.95 and \$79.95 or a total of \$150.

3. Through the use of the word "Regular," the price of \$229.95 is the price at which they have made a bona fide offer to sell or have sold Model 408 sewing machines on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

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

5. Recipients of their discount certificate have won a valuable prize, entitling them to a discount in the amount of \$150 as a reduction from the price at which the Model 408 sewing machine is usually and customarily sold by respondents.

6. The Model 408 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 guarantees.

PAR. 7. In truth and in fact:

1. The price of \$229.95, accompanied by the word "value," or any other word or words of similar import and meaning is a price which does appreciably exceed the price at which substantial sales of the Model 408 sewing machine were made in respondents' trade areas.

2. Purchasers of respondents' Model 408 sewing machine will

not save an amount equal to the difference between \$229.95 and \$79.95 or a total of \$150 or any other appreciable dollar amount.

3. With the exception of rare instances, the respondents have not made a bona fide offer to sell nor have they sold Model 408 sewing machines at a price of \$229.95 on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

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

5. Recipients of respondents' discount certificate have not won a valuable prize, since the \$150 amount of the said discount certificate is deducted not from respondents' usual and customary price for the Model 408 sewing machine but from a fictitious higher price, as herein alleged, and therefore, the value of the discount certificate is illusory.

6. The 25 year guarantee of the Model 408 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.

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 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 kind and nature as those sold by respondents.

PAR. 9. 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 said erroneous and mistaken belief.

PAR. 10. 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 issued its complaint on March 29, 1972, charging respondents with violation of Section 5 of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon a joint motion of complaint counsel and respondents' counsel that in the circumstances presented the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules that the consent order procedure shall not be available after issuance of complaint; and

The respondents, its counsel and complaint counsel having executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order is entered:

1. Respondent Sewing Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 526 East Dunlap, Phoenix, Arizona.

Respondent John P. Rooney is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Sewing Distributors, Inc., a corporation, its successors and assigns, and its officers, and John P. Rooney, individually and as an officer of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division 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. Using the word "value" or any other word or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of the same article of merchandise or service have been made in respondents' trade area and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which any article of merchandise or service has been sold in respondents' trade area.

2. (a) Representing, in any manner, that by purchasing any article of merchandise or service, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price, unless such merchandise or service has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

- (b) Representing, in any manner, that by purchasing any article of merchandise or service, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or service in respondents' trade area, unless a substantial number of the principal retail outlets in the trade areas regularly sell said merchandise or service at the compared price or some higher price.

- (c) Representing, in any manner, that by purchasing any article of the said merchandise or service, customers are afforded savings amounting to the difference be-

tween respondents' stated price and a compared value price for comparable merchandise or service, unless substantial sales of articles of merchandise of like grade and quality or similar services are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with an article of merchandise of like grade and quality or a similar service.

3. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise or services.

4. Using the words "Regular," "Reg.," or any other words of similar import and meaning, to refer to any price amount which is in excess of the price at which any article, merchandise or service has 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 and unless respondents' business records establish that said amount is the price at which such merchandise or service has 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.

5. 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 an 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.

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 1-5 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 1-5 of this order can be determined.

7. 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 nature or purpose of a contest.

8. 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.

9. 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.

10. Representing, directly or by implication, that any discount, credit or allowance is given 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.

11. Representing, directly or by implication, that any of their articles of merchandise or services are guaranteed unless the nature, extent and duration of their 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 respondents do in fact perform each of their obligations directly or impliedly represented under the terms of such guarantee or guarantees.

12. 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 guarantees.

It is further ordered. That the respondents herein shall forthwith distribute a copy of this order to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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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.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in their 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