

Consent order requiring an Omaha, Neb., retailer of sewing machines and other products, among other things to cease using deceptive contests and false pricing claims to sell sewing machines and other products.

Appearances

For the Commission: *F. Kelly Smith, Jr.*

For the respondents: *David S. Lathrop, Lathrop, Albracht & Dolan,*
Omaha, Neb.

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

Complaint

84 F.T.C.

Commission, having reason to believe that Oden Distributing Co., Inc., a corporation, and Donald W. Oden, individually and as an officer of said corporation, hereinafter sometimes 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 Oden Distributing Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 4814 Dodge Street, in the city of Omaha, State of Nebraska.

Respondent Donald W. Oden 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 products, when sold, to be shipped from their place of business in the State of Nebraska to purchasers thereof located in the State of Iowa and 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. In the course and conduct of their 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 and related services; said sewing machines and other products and services being of the same general kind and nature as those sold by respondents' competition.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and services, the respondents have made and are now making numerous statements and representations in newspapers, direct mail advertising, promotional materials, 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:

You have been selected at random in your area to participate in the all new

60TH ANNIVERSARY JACKPOT

It's Fun! It's Easy! Remove the Lucky Pull Tab on this letter. You may have already hit the NECCHI Jackpot GRAND PRIZE or one of many other prizes. If you have a symbol shown at the bottom of the page, you are a WINNER.

YOUR JACKPOT UNDER TAB _____ PULL TAB

EXAMPLE: If you should have 3 NECCHI'S (GRAND PRIZE) you will receive a brand new SEWING MACHINE. THIS COMPLETE PORTABLE COMES EQUIPPED TO ZIG-ZAG, SEW FORWARD AND REVERSE, MONOGRAM, MAKE BUTTON-HOLES, OVERCAST, AND DO MOST NEEDED STITCHES.

The only requirement our company makes is that you take out a 3 year service warranty and instruction policy at \$1.50 per month. * * *

* * * * *

Here is your opportunity to SAVE! SAVE! SAVE! and beat the high cost of clothing the easy, simplified NECCHI-ALCO way. Yes, with the enclosed Introductory Credit Check you can own a world famous * * * NECCHI or ALCO Sewing Machine at savings never before offered! * * *

EXAMPLE:

NEW ZIG-ZAG SEWING MACHINE	\$99.50
Less Your Credit Check	50.00
YOUR TOTAL COST ONLY	<u>\$49.50</u>

* * * * *

You are one of a very special group to receive this offer

Ask the people next door * * * * (sic)

* * * * (sic) Confirm the fact that their name is not in the group selected to receive this letter. * * * *

You are not a casual choice * * * (sic) this letter was mailed to you after careful investigation of the Omaha area, its growth rate, residents buying habits, and the market potential of our product.

Here's what we intend to do for you and why! We want to place a certain number of our newest model sewing machines in selected homes like yours and for a very good reason. A company survey has shown that owners of our machines sell an average of two units (usually by referral to friends, relatives, etc.) within three years of purchase. Thousands of dollars could be spent advertising in newspapers, T.V., radio, etc., but we want instead to pass these large amounts directly to you.

Here's how * * * (sic) a new ZIG ZAG equipped sewing machine that buttonholes, monograms, overcasts, sews reverse, darns-mends, and does most any sewing job regularly sells for \$149.95 (sic). This complete portable machine will be made available to you for a total cost of only \$44.95. A terrific direct savings to you of \$105. Budget terms available if you prefer. Remember * * * (sic) your total cost is only \$44.95.

PAR. 6. Through the use of the statements and representations set forth above and others of similar import and meaning, not specifically set out herein, separately and in connection with the oral statements and representations of their employees, agents, and representatives, respondents:

1. Represented, directly or by implication, that they have conducted bona fide contests, used analytical or scientific sampling techniques, or conducted marketing studies of the Omaha, Nebraska/Council Bluffs, Iowa, metropolitan area.

2. Represented, directly or by implication, that they offered free sewing machines or other products and services;

3. Represented, directly or by implication, that purchasers of products or services advertised were afforded savings equal to the difference between higher and lower prices claimed or listed in said statements or other representations.

PAR. 6. In truth and in fact:

1. Respondents have not conducted bona fide contests, nor have they used analytical or scientific sampling techniques or marketing studies of the Omaha, Nebraska/Council Bluffs, Iowa, metropolitan area.

2. The offered sewing machines or other products and services are not free but are offered only upon the contingent purchase of other products, services, warranties or instruction policies from respondents.

3. Purchasers of products and services were not afforded savings from the prices at which identical products and services were sold or offered for sale by respondents in the recent, regular course of their business.

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

PAR. 8. Through the use of aforesaid representations and others of similar import and meaning, not specifically set out herein, respondents have failed to disclose certain material facts. Respondents have stated that recipients of certain advertisements were eligible to receive free sewing machines when they were designated in a contest as grand prize winners or special discounts when they were designated as winners of lesser prizes; when, in fact, all or nearly all recipients of said advertisements were grand prize winners and such designation did not entitle them to a free sewing machine without purchase of additional products or services.

Respondents' failure to disclose either the percentage of winners in each contest category or the nature of contingent purchases necessary for receipt of free sewing machines or other products and services has the capacity and tendency to lead said recipients to believe they were winners of a contest which entitled them to valuable and rare prizes.

Therefore, the acts and practices set forth in Paragraph Eight were and are unfair, false, misleading, and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices, and their failure to disclose material facts, has had, and now has, a capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of sewing machines and other products and services from respondents by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were 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 Kansas City 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 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 sixty (60) 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 Oden Distributing Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

Decision and Order

84 F.T.C.

of Nebraska, with its office and principal place of business located at 4814 Dodge Street, city of Omaha, State of Nebraska.

Respondent Donald W. Oden 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 subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That Oden Distributing Co., Inc., a corporation, its successors and assigns, and its officers, and Donald W. Oden, 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, and sale of sewing machines and other products and 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, orally or in writing, that recipients of any advertising or promotional material were selected on the basis of analytical or scientific sampling techniques, or by use of marketing studies, or by use of any other device unless such device or method was, in fact, employed as stated.

2. Failing to maintain records and data which are open to the inspection of the Federal Trade Commission and which evidence the method used and other relevant information in support of such representations of the type dealt with in Paragraph 1 above.

3. Representing, directly or by implication, orally or in writing, that any price is the respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

4. Representing, directly or by implication, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" sewing machine or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise,

services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" whenever it first appears in each advertisement or offer.

5. Representing, directly or by implication, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

6. Representing, directly or by implication, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

7. Representing, directly or by implication, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

8. Representing, directly or by implication, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three (3) such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed fifty percent (50%) of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

9. Representing, directly or by implication, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

10. Representing, directly or by implication, orally or in writing, that by purchasing any merchandise or service:

- a. Customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise 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. 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 area regularly sell said merchandise or service at the compared price or some higher price.

c. Customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise or service, unless substantial sales of like grade and quality are being made in the trade area at the compared price or 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 merchandise or service of like grade and quality.

11. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraph 10 of this order are based and (b) from which the validity of any savings claims, sales claims and similar representations can be determined.

12. Representing, directly or by implication, that respondents conduct contests, unless such contests are actually conducted and advertisements or notices concerning said contests fully, clearly, and conspicuously disclose each and every of the following delineated items:

a. The total number of prizes which will be awarded in each prize category.

b. The nature of the prizes together with their value, which value must be stated as the value at which the identical or substantially similar item was 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.

c. The approximate numerical odds of winning each such prize; provided, however, that in a promotional device in which the odds cannot be determined with reasonable accuracy, respondents shall clearly and conspicuously disclose the approxi-

mate number of individuals to whom the promotional device is being disseminated if such fact may be reasonably determined.

d. All terms, conditions and obligations with which individuals will be asked to or must comply with in order to obtain a prize.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, 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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all of their present and future personnel engaged in the offering for sale, or sale of memberships, services, or any other products or services, 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 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

AMERICAN ROOFING AND REMODELING CO.

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

Docket C-2577. Complaint, Oct. 16, 1974—Decision, Oct. 16, 1974

Consent order requiring a Newark, Calif., home improvement contracting firm, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.