

Complaint

71 F.T.C.

iner of June 13, 1962 [65 F.T.C. 71, 77], containing an order to cease and desist, be, and it hereby is, set aside as to respondent The S & M Company and that the complaint as to this respondent be, and it hereby is, dismissed.

IN THE MATTER OF

CHARLES A. OLSON DOING BUSINESS AS
CONSOLIDATED SEWING MACHINE CO., ETC.

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

Docket 8705. Complaint, Aug. 25, 1966—Decision, Mar. 27, 1967

Order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease misrepresenting the nature of his business, making false pricing, savings and guarantee claims, conducting fictitious "drawings," and using bait tactics.

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 Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C. 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 Charles A. Olson is an individual doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., with his office and principal place of business located at 207 Kennedy Street, NW., Washington, D.C., 20011. He also uses the names New Home Sewing Center, Home Sewing Center, Consolidated Adj., National Adj., Consolidated Adj. Office, Credit Dept. and Collection Dept. in connection with his business.

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 vacuum cleaners to the public.

PAR. 3. In the course and conduct of his business, respondent

maintains his place of business wholly within the geographical confines of the District of Columbia and now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the District of Columbia to purchasers thereof located within the District of Columbia and in various States of the United States, and maintains, and at all times mentioned herein has 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 his business as aforesaid, and for the purpose of inducing the purchase of his said products, respondent has made various statements and representations in advertisements in newspapers of general circulation respecting the price, savings and guarantees of his merchandise and the nature of his business.

Among and typical, but not all inclusive of such statements and representations, are the following:

SEW. MACH.—1965 SINGER

Touch 'n Sew * * * *

Reposs. Balance \$86.40.

New Mach. guar. Dealer,

Credit Dept.—726-3342.

SEW. MACH.—Dealer. 1965

SINGER - - - Bal. \$76.80—

Collection Department.

SEW. MACH.—UNCLAIMED LAYAWAYS

YOUR CHOICE FOR \$65. SINGER

NECCHI, PFAFF ZIG-ZAG MODELS

CONSOLIDATED ADJ. OFFICE

726-3342.

SEW. MACH.—1965 SINGER

TOUCH 'N SEW - - -

BAL. \$38.75

NATIONAL ADJ.—726-7200.

PAR. 5. By and through the use of said statements and representations, and others of similar import and meaning but not specifically set out herein, separately and in connection with the oral statements and representations of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of the statement "Unclaimed Layaways" and the words "bal.," "repossessed" and words or statements of similar import, that sewing machines, partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," "National Adj." and names of similar import, that his principal business is that of lending money and settling and collecting accounts.

3. That in the guise of such business he is making a bona fide offer to sell repossessed machines or machines left in layaway for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

PAR. 6. In truth and in fact:

1. Said sewing machines are not being offered for the unpaid balance of the purchase price and the represented savings are not afforded purchasers.

2. Respondent is not engaged in the business of lending money or of collecting and settling accounts but is engaged in the business of the retail sale of new and used sewing machines and vacuum cleaners to the public.

3. Respondent is not making bona fide offers to sell the said sewing machines and on the terms and conditions stated but said offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondent or his salesmen, call upon such persons, but make no effort to sell said advertised sewing machines. Instead, they exhibited sewing machines which were in such poor condition as to be unuseable, and disparaged the advertised product to discourage its purchase, and attempted to and frequently did, sell much higher priced sewing machines.

4. The guarantee of said sewing machine contains numerous conditions and limitations which are not disclosed in the advertising.

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

PAR. 7. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent holds ostensible "drawings" in which persons are invited to register their names and addresses for the chance to win a free sewing machine and other prizes. The participants in said drawings then receive further promotional material by mail. Typical, but not all

inclusive of the statements and representations made in said registration blanks and followup material, are the following:

FREE DRAWING TICKET NO. 2999
Compliments of
CONSOLIDATED SEWING MACHINE COMPANY OF
WASHINGTON, D.C.
(address)

WIN A FREE SEWING MACHINE
PLUS OTHER PRIZES
—NOTHING TO BUY—
YOU NEED NOT BE PRESENT TO WIN

NAME _____
ADDRESS _____
CITY _____
PHONE _____

Entry Blank No. 2999

CONGRATULATIONS:

Your drawing ticket was selected in the FIRST AWARD GROUP in our drawing at the WASHINGTON INTERNATIONAL HOME SHOW.

Enclosed is your \$150 MERCHANDISE CERTIFICATE which may be applied toward the purchase of the 1966 DELTA SEWING MACHINE of your choice.

For example our DeLuxe
Semi Push Button Budget
Model Sells at219.95
LESS Award Certificate150.00
is YOURS FOR ONLY 69.95

This check is redeemable at your local store. We would like to take this opportunity to thank you for your interest and participation.

PAR. 8. By and through the use of the aforementioned statements, by oral statements of respondent or his salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That he conducts bona fide drawings and that recipients of said merchandise certificates have won a valuable prize through their participation in said drawing entitling them to a discount or bonus in the amount stated on the certificate, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the machine is being offered.

PAR. 9. In truth and in fact:

1. Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines. And, the purchaser does not receive an award since the amount of the award certificate is deducted not from respondent's usual and customary price of the product but from higher price, and therefore the award is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine and purchasers are not afforded savings of the difference between that price and the price at which the machine is offered.

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

PAR. 10. In the conduct of his business, and at all times mentioned herein, the respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondent.

PAR. 11. The use by the 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the 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.

Mr. Charles W. O'Connell and Mr. Edward F. X. Ryan, Jr., supporting the complaint.

Kunes & Feirstein, by Mr. Gerald Kunes, Laurel, Md., for respondent.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

FEBRUARY 14, 1967

TABLE OF CONTENTS

	<i>Page</i>
Preliminary Statement	361
Findings of Fact	363
I. Respondent and His Business	363
II. The Challenged Representations and Practices	364
Summary Findings	364
Evidentiary Support for Summary Findings	367
1. Extent and Nature of Advertising	367
2. Layaways, Unclaimed Merchandise, and Repossessions	367
3. Misrepresentation of Business Status	369
4. "Bait and Switch" Tactics	370
5. Guarantee Representations	379
6. Prizes and Prices	381
III. Conclusionary Findings	385
Conclusions of Law	386
Order	386

PRELIMINARY STATEMENT

The complaint in this proceeding was issued by the Federal Trade Commission on August 25, 1966, and was duly served on respondent. It charges misrepresentation in the sale of sewing machines and vacuum cleaners in violation of Section 5 of the Federal Trade Commission Act.

After being served with the complaint, respondent appeared in person, as well as by counsel, and filed answer making certain admissions but denying generally any violation of law. Although the answer was filed on October 10, 1966, subsequent to the 30-day period specified in Rule 3.5(a) of the Commission's Rules of Practice for Adjudicative Proceedings, it was ordered received and filed in view of the explanations made by respondent and his counsel (Order Receiving Answer and Setting Prehearing Conference, October 11, 1966).

A prehearing conference was held in Washington, D.C., on October 20, 1966, the result of which was a narrowing of the issues. Not only did respondent make certain admissions supplemental to those made in his answer, but by virtue of a stipulation between counsel (Tr. 29-30, 278-80), the number of witnesses was materially reduced, with a consequent reduction in the time of hearing.

Hearings for the presentation of testimony and other evidence in support of and in opposition to the allegations of the com-

plaint were then held in Washington, D.C., on November 15 and 16, 1966.

Throughout this proceeding, both sides were represented by counsel and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. The evidence so presented was duly recorded and was filed in the office of the Commission.

Proposed findings of fact and conclusions of law, accompanied by a proposed form of order and a memorandum brief, were filed by counsel supporting the complaint, but no similar submissions were made on behalf of respondent.

Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, together with the proposed findings, conclusions, and order filed by complaint counsel, the hearing examiner finds that this proceeding is in the interest of the public and, on the basis of such review and his observation of the witnesses, makes findings of fact, enters his resulting conclusions, and issues an appropriate order.

As required by Section 3.21 (b) (1) of the Commission's Rules of Practice, the findings of fact include references to principal supporting items in the record. Such references to testimony and exhibits are thus intended to comply with the rule and to serve as convenient guides to the principal items of evidence supporting the findings of fact, but these record references do not necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by complaint counsel, such references are intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used:

- CB—Brief of Complaint Counsel ¹
- CPF—Proposed Findings of Complaint Counsel ¹
- CX—Commission exhibits
- Par.—Paragraph
- p.—page
- pp.—pages
- RX—Respondent's exhibits
- Tr.—Transcript ²

¹ References to submittals of counsel are to page number—for example, CPF 32.

² Sometimes, references to testimony cite the name of the witness and the transcript page number without the abbreviation Tr.—for example, Olson 239.

FINDINGS OF FACT

I. Respondent and His Business

Respondent Charles A. Olson is an individual doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., with his office and principal place of business at 207 Kennedy Street, NW., Washington, D.C., 20011. He also uses or has used in connection with his business the names New Home Sewing Center, Home Sewing Center, Consolidated Adj., National Adj., Consolidated Adj. Office, Credit Dept., and Collection Dept. (Admitted, Answer, Par. 1; Tr. 6-8, 242-44; CXs 1 A-21.)

Respondent is now, and for some time has been, engaged in the advertising, offering for sale, sale, and distribution of new and used sewing machines and vacuum cleaners to the public. (Admitted, Answer, Par. 1; Tr. 231-34, 236.)

Respondent maintains his place of business in the District of Columbia. In the course and conduct of his business, he causes, and for some time has caused, his products, when sold, to be shipped from his place of business not only to purchasers located within the District of Columbia but also to purchasers located in various States of the United States. He maintains and has maintained a substantial course of trade in such products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Admitted, Answer, Par. 1.)

Olson has been doing business under the Consolidated name since March 1965. Previously, he had operated the business at the Kennedy Street address under the name New Home Sewing Centers. Before opening this store, he operated from his home in West Hyattsville, Maryland, as "an independent agent," selling new sewing machines (New Home brand), as well as used sewing machines of various makes. He had been in the sewing machine business for about 16 years as an employee of another company.

Gross sales of Consolidated in 1965 totalled about \$89,000, with sewing machines accounting for 95 percent of this amount. The trade area served by Olson is the District of Columbia and the neighboring States of Maryland and Virginia within a 50-mile radius. His advertisements have been published in newspapers circulating in the District of Columbia, Maryland, and Virginia. (Olson 231-38.) He employs two salesmen who primarily engage in "outside" sales, involving home demonstrations, and also has a salesman-bookkeeper at the store (Olson 244-45; Forgy 154-55).

In the conduct of his business, respondent is and has been in substantial competition in commerce with corporations, firms, and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondent. (Admitted, Answer, Par. 7.)

II. The Challenged Representations and Practices

Summary Findings

On the basis of his consideration of the testimony and other evidence, the examiner makes summary findings as follows:

In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent has made various statements and representations in advertisements in newspapers of general circulation respecting the nature of his business and the prices, savings, and guarantees offered in the sale of his merchandise.

Among and typical, but not all-inclusive, of such statements and representations, are the following:

SEW. MACH.—1965 Singer
Touch 'n Sew * * *
Reposs. Balance \$86.40.
New mach. guar. Dealer,
Credit Dept. * * * (CX 10)
SEW. MACH.—Dealer. 1965
Singer * * * Bal. \$76.80.
Collection Dept. * * * (CX 6 C)
SEW. MACHS.—Unclaimed, layaways,
your choice for \$65. Singer,
Necchi or Pfaff, zig-zag models.
CONSOLIDATED ADJ. OFFICE (CX 5 A-B)
SEW. MACH.—1965 Singer
Touch 'n sew * * * \$72.45.
Also 1965 auto. zig-zag * * *
Bal. \$38.75.
National Adj. (CX 16)

By and through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, either separately or in connection with the oral statements and representations of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of such terms (sometimes abbreviated) as "Unclaimed," "Layaways," "balance," and "repossessed," and words or statements of similar import, that sewing machines,

partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," and "National Adj.," and names of similar import, that his principal business is lending money and settling and collecting accounts.

3. That in the guise of such business he is making a bona fide offer to sell repossessed machines or machines left in layaway for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

In truth and in fact:

1. Such sewing machines are not being offered for the unpaid balance of the purchase price, and the represented savings are not afforded purchasers.

2. Respondent is not engaged in the business of lending money or (except incidentally) of collecting and settling accounts but is engaged in the business of selling at retail new and used sewing machines and vacuum cleaners to the public.

3. Respondent is not making bona fide offers to sell such sewing machines on the terms and conditions stated, but his offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through responses to his advertisements, respondent or his salesmen call upon such persons but make no effort to sell the advertised sewing machines. Instead, they exhibit sewing machines which are in such poor condition as to be unusable; they disparage the advertised product to discourage its purchase; and they attempt to, and frequently do, sell much higher priced sewing machines.

4. The guarantee of respondent's sewing machines contains numerous conditions and limitations which are not disclosed in the advertising.

Therefore, the statements and representations set forth (*supra*, pp. 364-365) were and are false, misleading and deceptive.

In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent holds ostensible "drawings" in which persons are invited to register their names and addresses for the chance to win a free sewing machine and other prizes. The participants in such drawings then receive further promotional material by mail. Typical but not all-inclusive of

the statements and representations made in registration blanks and followup material are the following:

FREE DRAWING TICKET NO. 2999
 Compliments of
 CONSOLIDATED SEWING MACHINE CO. OF WASHINGTON, D.C.
 [address]
 WIN A FREE SEWING MACHINE
 PLUS OTHER PRIZES
 —NOTHING TO BUY—
 YOU NEED NOT BE PRESENT TO WIN
 All Makes Sewing Machines and Vacuum Cleaners

NAME _____
 ADDRESS _____
 CITY _____
 PHONE _____

Entry Blank No. 2999 (CX 22)

CONGRATULATIONS:

Your drawing ticket was selected in the FIRST AWARD GROUP in our drawing at the WASHINGTON INTERNATIONAL HOME SHOW.

Enclosed is your \$150 MERCHANDISE CERTIFICATE which may be applied toward the purchase of the 1966 DELTA SEWING MACHINE of your choice.

For example our De luxe
 Semi Push Button Budget
 Model Sells at\$219.95
 LESS Award Certificate 150.00
 IS YOURS FOR ONLY 69.96

This check is redeemable only at our local store * * *.

We would like to take this opportunity
 to thank you
 for your interest and participation. (CX 23)

By and through the use of the foregoing statements, by oral statements of respondent or his salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That he conducts bona fide drawings and that recipients of merchandise certificates have won a valuable prize through their participation in such drawing, entitling them to a discount or bonus in the amount stated on the certificate as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that pur-

chasers are afforded savings of the difference between that price and the price at which the machine is being offered.

In truth and in fact:

1. Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines. The purchaser does not receive an award since the amount of the award certificate is deducted, not from respondent's usual and customary price of the product, but from a higher price, and therefore, the award is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine, so that purchasers are not afforded savings of the difference between that price and the price at which the machine is offered.

Therefore, the statements and representations set forth (*supra*, pp. 366-367) were and are false, misleading, and deceptive.

Evidentiary Support for Summary Findings

The record fully supports the summary findings, which are virtually identical to the allegations of the complaint. The analysis that follows includes detailed findings on the material issues of fact and law, together with record references and an exposition of the reasons or basis for such findings.

1. Extent and Nature of Advertising

The dissemination of such advertising was admitted by respondent (Answer, Par. 1), and a sampling of his advertising is in the record as CXs 1 A-21. Olson advertises primarily in the classified advertising pages, using the Washington Star and The Washington Post daily, pursuant to lineage contracts. He previously used the Washington Daily News, the Northern Virginia Sun, the McLean (Virginia) Free Press, and The Montgomery County (Maryland) Sentinel.

Each advertisement appears daily for from three to seven days. His advertising costs average about \$400 a month. (Tr. 237-39.)

Although Olson testified that he has advertised new machines as well as used machines, the record establishes that his practice is to advertise used machines (Tr. 240-42; CXs 1 A-21).

2. Layaways, Unclaimed Machines, and Repossessions

The record leaves no doubt of the falsity of Olson's representations that sewing machines partially paid for by previous purchasers were being offered for the unpaid balance of the purchase

price, thus affording savings to subsequent purchasers (*supra*, p. 364). Respondent admits making the challenged representations (Tr. 7-9), but he denies their falsity (Answer, Par. 3; Tr. 19).

The attorney-investigator testified that during his investigation of this case he asked Olson to explain the use in his advertisements of such terms as "unclaimed," "layaways," and "balance." Olson explained that customers would leave deposits of from \$5 to \$15 on sewing machines to hold them for future delivery; that when the time for claiming such machines had expired, he listed and advertised them as "layaways" or as "unclaimed"; and that the price was stated as "Balance" or "Balance owed" (for example, CXs 1 A, 15). Despite the clear meaning of such representations (Espeut 66; Pittman 87), Olson did not defend them as true, but he told the Commission attorney that in his advertisements such terms as "balance" and "left to pay" were not meant to represent that this was the balance of the purchase price left unpaid by a previous purchaser but simply constituted a method of quoting a price for which the machine could be purchased (Forgy 153-54).

Olson testified that the deposits paid by the original purchasers were not forfeited; that although he made no cash refunds, the amount paid as a layaway deposit could be applied to the purchase of other merchandise (Olson 304-05). Thus, although Olson testified that he "would normally cut the price" when a layaway was put back into stock (Tr. 304), it is evident that deception was present either in the representation of savings to the subsequent purchaser or in the purported credit of the layaway deposit on the purchase of other merchandise by the original purchaser.

In any event, the attorney-investigator was unable to find any documentary evidence to substantiate Olson's contentions that the advertised machines were unclaimed and layaway merchandise (Forgy 153-54, 171-76). It is also significant that, with one dubious exception, Olson failed to produce any such evidence at the hearing. That exception came to light during the cross-examination of the attorney-investigator, when respondent's counsel referred to a sales slip (CX 30-Z-1) bearing the notation "Left in Lay way" as evidence of a layaway record that the investigator had missed in his examination of Olson's records. This sales slip was dated February 5, 1966—subsequent to the conclusion of the investigation (Tr. 144)—and thus was not something that had been overlooked by the investigating attorney.

(Forgy 171-76.) Moreover, the fact that this notation appeared after the question of layaways had been raised by the investigator makes its validity suspect. Even accepting the entry at its face value, its presence among respondent's records suggests that it was the practice of respondent to note layaway sales on sales slips. The absence of any similar notations on sales slips before February 1966 leads to an inference that there had been no such transactions previously.

Moreover, the customer involved in this transaction did not understand that she was buying a "layaway" item. She had not noticed the "left in lay way" notation until she looked at the sales slip before she testified (Pittman 98-99). Her recollection was that although it was advertised as a "repossession," the salesman told her that the machine had been won in a contest but that the winner had never picked it up, so that Consolidated was selling it as a layaway or a repossession (Pittman 83, 86-87, 94, 98).

Similarly, the Commission's attorney-investigator vainly sought records indicating that machines advertised as "repossessed" had in fact been repossessed. Olson was unable to produce, either in the investigation or at the hearing, any such records or any other evidence relating to repossessions. (Forgy 152, 154, 185.)

It is not necessary to rely on any restricted technical definition of the term "repossessed" or "repossession" (Forgy 182-85; Olson 303-04) to conclude that Olson's use of such terminology was false, misleading, and deceptive.

The deceptive nature of Olson's use of the "repossession" terminology was aggravated by its association with such fictitious names as collection department, credit department, and adjustment office. (See Section 3, *infra*.)

3. Misrepresentation of Business Status

Although respondent first denied (Answer, Pars. 2 and 3) the allegation that his use of such fictitious names as collection department, credit department, adjustment office, and national adjusters falsely represented that his principal business is lending money and settling and collecting accounts (Complaint, Pars. Five (2) and Six (2)), he withdrew the denials at the prehearing conference. Thus, there is no dispute that respondent made the false, misleading, and deceptive representations alleged. (Tr. 6-8, 19-21; see also Olson 242-44.)

4. "Bait and Switch" Tactics

The record establishes that Olson has engaged in a "bait and switch" operation. His sales scheme clearly fits the definition of this unfair practice in the Commission's Guides Against Bait Advertising (November 24, 1959, CCH Trade Regulation Reporter, Par. 7893):

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

Let us consider, first, the evidence of respondent's sales operation as recounted by some of his customers.

Of the six consumer witnesses who testified, five of them were switched to machines priced considerably higher than the advertised machine which led them to contact respondent. A brief summary of the testimony of each of these witnesses graphically portrays the nature of respondent's sales scheme:

Mrs. Barbara Espeut. Mrs. Espeut, of Suitland, Maryland, responded to a Consolidated ad in The Washington Post in January 1965. She was attracted by the bargain price of less than \$100 for a used Singer that she knew retailed, when new, for more than \$300. The advertisement represented the machine as repossessed and listed the price in conjunction with the term "balance due." She understood this term to mean that if she bought the machine, she would not have to pay the full price, but merely the balance owed by someone else who had not completed the payments. (Tr. 54-55, 63, 66.)

Then, in one marathon sentence, she provided a capsule description of the bait and switch technique:

Well, the machine he brought, he said it was a Touch 'n Sew, but it was not the same model as the model that I had seen in the Singer Sewing Machine Company, and I told him there was no sense in putting this up or demonstrating the machine, because I was not interested, that it was not the one I thought it was, so he went out—well, he said that he had another machine in the car that was a better machine, that maybe I would like this one, and so I asked him to bring this one in, and he brought this machine in, and he went on to tell me that they had had a lot of complaints against the Singer machines, because they were delicate and the parts were—well, they were not functioning as they should, and this particular machine that he had was a better machine, so he demonstrated it for me, and I was please[d] with the machine, and so I bought it [for \$146.26] (Tr. 56-58).

Mrs. C. M. Young. Mrs. Young is a Silver Spring housewife who went to the Consolidated store in March 1966, accompanied by her husband, after seeing an ad in The Washington Post for a repossessed 1965 or 1966 Touch 'n Sew Singer at a price of \$90 or \$99. She knew the price for a new machine was about \$300. (Tr. 69, 75-76.)

The salesman readily demonstrated the machine, but she was not interested in buying it. The housing was discolored and "beyond repair," and the salesman told her that the Singer machines were subject to "a lot of mechanical difficulties"—that they were in the shop more frequently than others. Mr. and Mrs. Young then became interested in a new Delta machine and bought it instead, paying \$196.55 cash after getting a \$30 allowance on her old machine. (Tr. 71-73, 75, 77-79.)

Mrs. Young said she looked at the Delta of her own volition; it was not anything that the salesman did, although he "helped us [and] turned our attention to it." He did not try to force it upon her, but demonstrated it at her request (Tr. 74, 77).

As for the attitude of the salesman toward the advertised Singer, Mrs. Young put it this way: "He was not pushing it, nor was he pushing the other one. It was just as if almost it was not there, you know. I was not interested, he could see that. I did not want that machine." (Tr. 79-80.)

Mrs. Jane Pittman. Mrs. Pittman, of Beltsville, Maryland, dealt with respondent in February 1966. She was attracted by an ad for a repossessed Singer zigzag for just under \$100. She considered a repossession as being practically a new machine, and she interpreted the ad as meaning she would simply have to pay the balance unpaid by the original owner. (Tr. 82, 84, 87.)

The salesman brought "a limited zigzag." This was not what she wanted, but as far as she knew, it was the machine described in the advertisement. (Tr. 88.)

The advertised special was damaged, and the salesman said that the previous owners "had mistreated it"—that it looked to him like a hot iron had been placed up against the plastic molding. Mrs. Pittman finally bought a Delta 1804-B, paying \$200.85. The salesman told her the usual price was much higher, and this was confirmed to her satisfaction when she called Consolidated to inquire about Delta prices. (Tr. 89-92, 97.) Mrs. Pittman is satisfied with the machine she bought and does not feel she was deceived in the transaction (Tr. 96).

For the "layaway" aspects of this transaction, see *supra*, p. 369.)

Mrs. John N. Suhr. Mrs. Suhr, an Alexandria, Virginia, housewife and teacher, told of calling Consolidated in response to an advertisement for a repossessed 1965 Singer zigzag priced at about \$35. The salesman brought in what was supposed to be a 1965 zigzag—"a portable in a black, battered, beaten old case"—and said, "this is the machine." She described it as an "old beaten up" Singer about 25 or 30 years old, commenting, "I know it was that old, because my mother's is the same." (Tr. 194-95.) The machine was a straight-stitch Singer with no attachments; it was an "awfully old" machine and was scratched and dirty. (Tr. 197.) She would not have paid more than \$5 or \$6 for it; she had "seen machines in better shape at rummage sales" (Tr. 199).

The salesman did not refuse to show or demonstrate the old machine. He did not disparage it; in fact, he referred to it as "a very nice machine." But he confessed that this was his first day on the job; he did not know much about sewing machines and could not actually demonstrate it. When Mrs. Suhr told the salesman she was not interested in the old Singer, he brought in two other machines which he priced at \$289 and \$365. Mrs. Suhr bought the \$289 machine but paid only \$110; the salesman explained that he could discount it because he was new. (Tr. 192-200.)

Initially, there was some question whether Mrs. Suhr had dealt with respondent (Tr. 192-94), but counsel for respondent conceded on the record that her dealing was with Olson, operating as New Home Sewing Center (Tr. 203, 212-13; but see Olson 306-08).³

Miss Judith Lea Andriot. Miss Andriot, a young clerk-typist from McLean, Virginia, went to respondent's store in the fall of 1965, after seeing an ad for a Singer zigzag priced at \$79 or \$89. Olson and another salesman showed her the advertised machine, but it was blackened with smoke, and she was told that it had been in a fire. She quickly indicated she did not want it, and they showed her another machine, the price of which she did not remember, except that it was less than \$300 and more than \$130. She told them she did not want to pay over \$130, and they sold her a Delta for \$129.50 or \$129.95. (Tr. 217-22.) She was told that she was getting a \$100 discount. They explained that the machine was regularly \$229 but that they were selling it at the

³ Mrs. Suhr is not mentioned by name at Tr. 203 (lines 18-22), but the reference to her is clear. Likewise, the reference to "prior witnesses" at Tr. 212 (lines 18-21) is to Mrs. Suhr. (The word "she" in line 19 should be corrected to read "we," and the word "Homestead" in line 21 should be "Home instead.")

Home Show for \$180, and they would lower the price further for her because she was getting a demonstrator. (Tr. 222-24.)

Miss Andriot is satisfied with the machine she bought, but she is still dubious about the way "they lowered the price so radically for me" (Tr. 228). There were also problems about the financing arrangements (Tr. 229).

Mrs. Gloria Davis. Mrs. Davis, of Alexandria, Virginia, was the only customer witness on whom respondent's salesmanship had been unavailing. She had responded to a Post ad for a three-months-old Singer zigzag priced at about \$55. The salesman showed her such a machine but it had a cracked case and was in very poor condition—"a piece of junk." When she indicated she was not interested, the salesman brought in another machine priced at around \$200. The salesman did not refuse to show or demonstrate the Singer, and she did not remember that he tried to discourage its purchase. (Tr. 201-03, 206-09; Forgy 262.)

As in the case of Mrs. Suhr (*supra*, p. 372), there was initially some question about connecting Mrs. Davis's experience with respondent (Tr. 202-05), but the connection was satisfactorily established through other evidence (CX 44; Tr. 212-16; Forgy 255-62).

When this evidence is considered in conjunction with the stipulation that an additional 20 witnesses would have testified substantially along the same lines (Tr. 29, 278-80), the finding must be that as part of a bait and switch scheme, respondent falsely represented in his advertisements the model of the Singers offered for sale, their condition, and their age, as well as the basis for the purported bargain prices (Sections 2 and 3, *supra*, pp. 367-370).

Thus, the "bait" consists of advertisements of a name-brand machine at bargain prices. Most of Olson's advertisements represent that the used Singers are current models, "like new," and may be purchased for considerably less than \$100. For example:

1965 Singer, six wks. old	(CXs 1 A, 5 C, 6 C, 7 B, 9 A-B.)
* * * '65 Singer Touch 'n Sew, like new	(CX 1 B.)
1965 Touch 'n Sew, Singer * * * 2 mos. old	(CXs 2 A-C.)
1965 Singer auto. * * *, latest mod	(CXs 3 A-C.)
Late styles	(CX 4 A.)
1965 Singer auto. * * * Latest style, like new	(CX 4 A; see also CX 8 A.)
1965 Singer Touch 'n Sew * * * 3 mo. old	CX 6 C, 7 A-B; see also CXs 5 C and 9 A-B.)

Similarly, other advertisements consistently referred to 1965 models (CXs 10-21).

The pulling power of these ads has been demonstrated. But what happened when customers responded? The bait was displayed; there was no refusal to sell it. But, one way or another, the "switch" got underway.

First, the machines displayed were not the machines the customers had been led to expect. They were not, for the most part, late-model Singers in virtually new condition. They invariably had some self-disparaging characteristics—"built-in dissuaders"—so that it was seldom necessary for the salesman to persuade the prospect not to buy the first machine displayed—ostensibly the advertised machine. Many prospects rejected it on sight.

Some of the machines so displayed were smoke-blackened (Andriot 221), soiled or dirty (Espeut 57-58; Suhr 197), damaged (Pittman 89-91), discolored (Young 71), and "in very poor condition," with a cracked housing (Davis 203). One was described as 25-30 years old (Suhr 194-95); another as "a piece of junk" (Forgy 262).

Second, overt disparagement was resorted to when necessary to accomplish or to reinforce the switch to another machine. Even in those instances in which the customer had already expressed her disinterest in the bait machine, the salesman might indicate that Singers were "delicate," resulting in complaints concerning their operation (Espeut 54-56; Young 71) or he might otherwise disparage the advertised machine (Pittman 89-91; Andriot 220).

Third, having discouraged the sale of the purported advertised special, respondent or his salesmen inevitably were able to produce a "better," more expensive machine with the result that the purchaser might be and frequently was switched from the advertised product to the higher priced machine.

The inference is inescapable that respondent's advertisements are not a bona fide effort to sell the advertised products. But such a finding need not rest on inference alone. Confirmation comes from respondent's own testimony and his own records.

Although respondent has been spending \$400 a month to daily advertise used Singers (Olson 239), the sales of such machines were minimal in comparison to the sales of other makes and models. In the 21-month period from January 1, 1965, to Septem-

ber 30, 1966, only 36 used Singers were sold, compared to 613⁴ unadvertised higher priced new machines of non-Singer manufacture (CXs 29 A-37-Z-14; Ryan 272-75; Olson 287).⁵

Respondent undertook in his testimony to inflate the 36 Singer sales over a 21-month period as representing an average of two or three a month (Olson 287). At any rate, the decided cases make clear that occasional sales of the advertised product do not exculpate a respondent if they are only a by-product of or an incidental occurrence in a general pattern of bait and switch selling. Such sales may provide "an aura of legitimacy," but it is only an aura, and the law is concerned with reality.

Moreover, Olson's own testimony was to the effect that he regularly advertised used Singer machines in order to obtain leads. He defended this practice—but not on the basis that he was making any effort to sell the used Singers; his own records, as we have seen, foreclosed any contention that the sale of used Singers constituted any significant part of his business.

Rationalizing his advertising and sales operation in response to a series of leading questions, he emphasized that Singer is a well-known brand—a household word for sewing machines. He was then asked if he regularly advertised Singer used sewing machines "in order to obtain leads," and his answer was "Yes." This, he said, is "normal procedure in the business"—"a common practice." It is "selling upwards." (Tr. 283, 288.)

In response to another series of leading questions, Olson testified that he had to engage in this practice to meet competition. He contended that otherwise he could not compete with other dealers and would be put out of business. (Tr. 283.)

Olson also had admitted to the investigating attorney⁶ that he was not interested in selling the advertised Singers (Forgy 150). The investigating attorney described a used Singer that was being advertised during the investigation and characterized

⁴ The total of 613 is exclusive of about 175 machines sold through the Home Show award certificate promotion (Ryan 273-74; Forgy 161). During the same period, respondent sold 30 used machines other than the Singers (Ryan 273-74).

⁵ The origin of the used Singers that respondent did stock and sell is not altogether clear. Respondents purchase records (CXs 38-41) account for only four; presumably, some were trade-ins. (See Forgy 145-47, 180-82; Olson 311.) Whatever their origin, there is no doubt that respondent did not have an inventory of used Singers large enough to warrant his daily advertising of such machines.

⁶ The investigation of this case was conducted by Lawrence E. Forgy, Jr., who was an attorney-investigator for the Commission from April 1965 until early 1966. At the time he testified, he was an attorney for the Joint Congressional Committee on Internal Revenue Taxation. In connection with his investigation of this case, he visited the store, interviewed Olson, and examined records on three occasions in November and December 1965. (Forgy 142-44.)

it as "generally in bad condition" (Forgy 149).⁷ The investigator recounted his discussion with Olson concerning such a machine:

He [Olson] told me * * * that his policy was that he did not want to sell this machine, actually, and that it was a good working business practice * * * to have a machine like this that would not really go, because you could not buy enough of these used Singer sewing machines * * * to supply the * * * people that wanted to get these sewing machines. You can't get enough of them, if you are running these ads daily, to supply the demand for them, so you don't really want to sell your lead. Your lead is there for a particular purpose, to bring prospective customers to you or to make you able to go to them. Then you switch them off on your other * * * more profitable merchandise. (Forgy 150.)

The investigator said that he asked Olson why he kept advertising Singers with so few on hand. He then summarized Olson's reply as follows:

His comment * * * was that this Singer machine was his lead and that what he did with this was that he would take these Singers out and demonstrate them to the people and if the customer, the prospective customer, was not satisfied with the machine, he would then show him one of his Delta line machines and this * * * would lead into another sale.

* * * one statement that he made to me was that it was almost impossible to run a sewing machine business in this town as a small businessman unless you did have a lead, because people actually aren't * * * in the market for new sewing machines. Almost everybody that wants to buy a sewing machine, who does not go to Singer or one of these other outlets, they are looking for a used sewing machine that they can get very inexpensively * * *.

* * * [without] this lead-in merchandise * * * you just don't get the calls. You don't make contact with prospective customers. Forgy 148-49; see also Forgy 165-66; Olson 294.)

Even without the persuasive consumer testimony and the documentary proof, findings as to the bait and switch nature of respondent's business might be based largely on those admissions that respondent made during the investigation and during the hearing. Respondent's counsel suggested that his client's frankness was attributable to the alleged—but unproved—failure of the investigating attorney to properly warn Olson of his constitutional rights (Tr. 263-67). However, the real explanation appears to be that, as expressed by the investigator, Olson had no idea that his bait and switch tactics constituted in any way an unfair business practice (Forgy 263). The investigator stated that Olsen "did not understand that the particular practice * * * of using leads and bait in the sale of sewing machines was illegal or * * *

⁷ When Olson sought to demonstrate this machine, it took him 10 to 15 minutes "to get it in order so it would work * * *" (Forgy 150).

was an unfair trade practice; and, therefore, he made no attempt to conceal the fact that he did use this practice in his business" (Forgy 265). This impression is reinforced by Olson's testimony. His defense of the practice may be summed up in the excuse frequently encountered in Commission proceedings: "Everybody's doing it." Without considering the legal or moral aspects of the practice, Olson simply adopted the practice as competitively necessary to his business survival. The bait and switch technique was "normal" or "standard" procedure—"a common practice" (Olson 283, 288).

Accordingly, the evidence amply supports this general finding:

Respondent does not make a bona fide effort to sell the advertised machines, but uses the advertisements to obtain leads to prospective purchasers in order to switch them to the purchase of higher priced machines. The advertisements are of used Singer sewing machines purporting to be high-priced current models at very low prices. On presentation to the prospective customers responding to such advertisements, the machines prove to be unsightly, damaged, or otherwise unsuitable so that the prospective purchasers reject them on sight. And if necessary to accomplish the switch, the salesman disparages the advertised machine.

Complaint counsel frankly recognize that respondent's operation was not marked by the flagrant disparagement frequently found in earlier cases of this type. But complaint counsel are persuasive in urging that respondent's technique is no less deceptive and no less deserving of an injunctive order.

In their proposed findings, complaint counsel state:

We look in vain for any heavy handedness in the salesman's presentation once he gets his foot in the door. We have little evidence of outright disparagement. Instead, respondent [uses] a subtle almost undetectable approach. * * * The evidence indicates that the prospective purchaser is led on without suspecting the insincerity of the salesman's presentation and the switch is made to a higher priced machine of a different make as though the transition were the suggestion of the prospect and not the salesman. (CPF 17-18.)

Despite such variations and despite the absence of any exact parallel, this case presents the same basic elements and distinctive pattern found in the numerous bait and switch cases decided by the Commission in the past: First, there is heavy advertising of a popular name-brand product at a low price. Second, prospects attracted by such advertising are discouraged in one way or another from purchasing the advertised product and are switched to more expensive merchandise. This may or may not involve disparagement—blatant or subtle—by the sales-

man. Third, sales of the advertised product constitute a small percentage of total sales.

On the negative side, there is no evidence that respondent or his salesmen refused to sell the product offered in accordance with the terms of the offer. But such a refusal is not an essential ingredient for a finding of bait and switch tactics.⁸ In the circumstances disclosed by this record, there was no occasion for respondent to refuse to sell. The technique was to assure, instead, that it was the customer who refused to buy. Through the use of self-disparaging merchandise, sometimes aided and abetted by direct or indirect disparaging comments by respondent or his salesmen, the effect was the same as if respondent refused an offer to purchase.

In a case such as this, involving the demonstration or showing of a product that is defective, unusable, or impractical for the purpose represented in the advertisement, the law does not require evidence of an offer to buy coupled with a refusal to sell.

The Commission has recognized that bait and switch tactics are not cast in any rigid mold—that the pattern may vary from the most heavy-handed to the very subtle. It has noted that the product itself may constitute “a built-in dissuader.” *Household Sewing Machine Company*, 52 F.T.C. 250, 265–67 (1955).

Furthermore, there is no requirement that the salesman must specifically direct the attention of the prospective purchaser to a higher priced machine, although this is usually the case. The switch has been accomplished if the prospective purchaser is discouraged from purchasing the advertised machine by the design of the seller, whether through the appearance or condition of the machine or by words of disparagement uttered about it. It is no less a switch if the customer, having been thus discouraged from purchasing the advertised product, asks the salesman if he has any other such products.

There is no need, in a case as clear as this one, for any lengthy references to in-depth legal research. Respondent's practices fall afoul of the Commission's Guides Against Bait Advertising (November 24, 1959, CCH Trade Regulation Reporter, Par. 7893), which essentially represent a codification of ruling case law. The relevant cases—including a large number involving sellers of

⁸ The somewhat confusing evidence relating to salesmen's commissions (Forgy 156; Olson 245–47) affords no basis for a finding that the compensation plan for salesmen is especially designed to discourage the sale of the advertised machines. However, commissions are on a percentage basis, so it is obviously to the salesman's advantage to sell at the highest price possible.

sewing machines and vacuum cleaners—are collected in Par. 7815, CCH Trade Regulation Reporter.

In summary, the respects in which respondent's sales scheme offends the law are these:

1. Respondent's advertising and his showing of the used Singer machines are not bona fide efforts to sell the advertised product.
2. Respondent's advertisements misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be and frequently is switched from the advertised product to another. The first contact or interview is secured by deception.
3. Salesmen disparage the advertised product.
4. The product itself is defective, unusable, impractical, or otherwise unsuitable.
5. Respondent does not have available a sufficient quantity of the advertised product to meet reasonably anticipated demands.

As far as the legal precedents are concerned, it is well settled that the law is violated if the first contact is secured by deception, *Exposition Press, Inc. v. Federal Trade Commission*, 295 F. 2d 869, 873 (2d Cir. 1961), and it is no defense that customers may be satisfied with the purchases they ultimately make, *Lifetime, Inc.*, 59 F.T.C. 1231, 1242 (1961). Nor is it necessary to list any long line of authorities for the proposition that it is no defense for the respondent that his competitors engage in the same practice or that it is necessary for him to engage in the practice in order to stay in business. *International Art Company v. Federal Trade Commission*, 109 F. 2d 393 (7th Cir. 1940), *cert. denied*, 310 U.S. 632.

5. Guarantee Representations

There is no question that respondent advertised sewing machines as being fully guaranteed or as being covered by new machine guarantees (CXs 2 A, 10), but respondent's counsel contended at the prehearing conference that these representations do not imply an unconditional guarantee (Tr. 9-10, 13). That contention is rejected, and the examiner finds that respondent's advertising representations were to the effect that his sewing machines were guaranteed without qualification, limitation, or condition.

Contrary to such representations, the guarantee referred to (C X 42; *Forgy* 156-58)—entitled "25 Year Guarantee Bond"—is limited, conditional, and qualified. It is limited in time; it excepts numerous parts and attachments; it contains a provision that the

defect must not be the fault of the purchaser or user; it is conditioned on specified use, care, service, and maintenance; and, despite the title, it limits the guarantee of the motor, the motor accessories, and all electrical equipment to one year.

Moreover, there is a serious question whether the purported guarantee (CX 42) is applicable to used machines, as advertised (CX 10). Although respondent told the attorney-investigator (Forgy 157-58) that he guaranteed used machines as if they were new—that this is what he meant by new machine guarantee (CX 10)—the guarantee that he referred to (CX 42) specifies that it “applies only to the original purchase of this machine when new * * *.”

The case law respecting the advertising of guarantees has been synthesized in the Commission’s Guides Against Deceptive Advertising of Guarantees (April 26, 1960, CCH Trade Regulation Reporter, Par. 7895). The fundamental principle is that a bare representation that a product is guaranteed is interpreted as involving an unconditional guarantee. Guarantee representations must disclose the identity of the guarantor, the nature and extent of the guarantee, and the manner in which the guarantor will perform. If there are any conditions or limitations in the guarantee, they must be disclosed in advertising.

Respondent’s representations that machines are fully guaranteed or that they are covered by a new machine guarantee fail to make the required disclosures.

Thus, respondent’s guarantee representations are false, misleading, and deceptive.

There is some confusion whether the record contains all the guarantees reputedly used by respondent, but this does not detract from the basic finding that respondent’s guarantee representations are deceptive.

The investigator testified Olson told him that the guarantee referred to in his advertisements was the “25 Year Guarantee Bond,” which is in the record as CX 42. This was Olson’s personal guarantee (Forgy 156-57). Olson specifically stated, according to the investigator, that CX 42 was the new machine guarantee advertised in CX 10 (Forgy 157-58).

On the witness stand, however, Olson testified that he had “many guarantees”—that “There is no one particular guarantee for everything” (Tr. 305). He said the 25-year guarantee bond (CX 42) was representative of his guarantee of new Deltas, but not of used machines (Tr. 305-06). He indicated that each new

machine carries a factory guarantee, but that CX 42 represents his dealer guarantee on Deltas (Tr. 305-06).

The guarantee applicable to used machines, he said, is specified on the sales slip. He indicated that such guarantees may range from 90 days to 20 years, but that "normally," late-model used machines carry a guarantee of one year, and that this is unconditional, covering "labor, service, parts, everything, unless otherwise specified" (Tr. 306).

Although neither respondent nor complaint counsel cited any specific examples of guarantees on the advertised Singers, the sales slips (CXs 37 A-Z-13) include about a dozen on which there were handwritten guarantee notations—for example, CX 37 K ("5 yr. on Parts"), CX 37 0 ("10 Year Guarantee All Parts"), and CX 37 Q ("5 years Parts & Service"); see also CXs 37 G and 37 V, W, Z, Z-3, Z-4, Z-7, Z-9, Z-10, and Z-12.

Thus, in those instances also, the actual guarantee involved time limitations and other qualifications that were undisclosed in the advertisements.

Whatever the facts may be regarding additional guarantees that respondent may have furnished, the fact remains that the evidence here supports an order against his deceptive advertising of guarantees.

6. Prizes and Prices

Respondent admitted in his answer (Pars. 4 and 5), that he represented (as alleged in Pars. Seven and Eight of the complaint):

1. That he conducts bona fide drawings and that recipients of "award certificates" have won a valuable prize through their participation in such drawings, entitling them to a discount or bonus, in the amount stated on the certificates, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the machine is being offered.

The answer (Par. 4) states that respondent did not regularly hold drawings—that he had sponsored only one in connection with the National Home Furnishing Show. The answer (Par. 6) also denies the falsity of the representations made and defends (Par. 5) the offer as "a bona fide offering * * * made at list price * * *."

The evidence relating to respondent's use of "drawings" to

promote sales by representing that prospective customers were entitled to substantial discounts (Complaint, Pars. Seven-Nine) demonstrates beyond any doubt the deceptive nature of this operation. The fact that such promotional activities had not been repeated as of the date of trial is immaterial.

There were two so-called drawings—both in connection with the Washington International Home Show⁹ held at the D.C. Armory between September 25 and October 3, 1965:

(1) Respondent sponsored a booth at the Show, at which those in attendance were invited to register for a free sewing machine¹⁰ and other prizes (CX 22). Some 3,500 persons (perhaps 5,500) registered in this drawing, and follow-up letters (CX 23) were sent to approximately 2,000. (Olson 249-54, 296-99, 320-21; Forgy 158-63, 185-91.) They were told that their tickets had been "selected in the FIRST AWARD GROUP" in the drawing, as a result of which they were being sent \$150 merchandise certificates that might be applied toward the purchase of a 1966 Delta Sewing Machine (CXs 23, 24).

(2) In addition, Olson purchased the registration cards of those registering for free door prizes at the Home Show. To some 2,000-2,500 of these registrants, he sent an announcement that they had been "selected in the DOOR PRIZE GROUP" in the Home Show drawing, as a result of which they were entitled to a \$100 merchandise certificate which might be applied toward the purchase of various sewing machines or vacuum cleaners. (Olson 251-52; CXs 25-27.)

Respondent also utilized in connection with this promotion a so-called "Bonus Certificate" (CX 28) that purportedly entitled the bearer to a free cabinet with the purchase of a 1966 Delta sewing machine (Forgy 161-63). Approximately 200 persons received Bonus Certificates (Forgy 161).

The registration form used at the Consolidated booth at the Home Show (CX 22) was entitled "Free Drawing Ticket" and made these representations: "Win a Free Sewing Machine Plus Other Prizes—Nothing to Buy." The door prize registration blank (CX 27) bore a heading "Register for Free Prizes."

One interesting aspect of these awards is that the ostensible

⁹ The show in connection with which respondent conducted drawings is variously referred to in the record—"National Home Furnishing Show" (Answer, Par. 4); "Washington International Home Show" (Olson 247; CXs 23, 26); and "Home Furnishings Show" (CX 27). However denominated, it is the same exhibition. Frequently, the witnesses referred simply to the Home Show (for example, Forgy 158, 160; Olson 251, 297).

¹⁰ Respondent evidently did deliver a free sewing machine (see CX 23); the complaint raises no issue regarding this aspect of the drawing.

price of the sewing machine represented as subject to a discount of \$100 or \$150 was tailored according to the amount of the so-called award certificate:

(1) To the recipients of the \$150 certificate, the example given of the merchandise toward which it might be applied was a "De luxe Semi Push Button Budget Model," priced at \$219.95, resulting in a net price of \$69.95 (CX 23).

(2) To the door prize winners of the \$100 certificates, the same "De luxe Semi Push Button Budget Model" was represented as selling at \$159.95, resulting in a net price of \$59.95 (CX 26).

Although the evidence concerning the manner in which the "award" winners were selected (Olson 247-54, 296-99; Forgy 161-62, 185-89) is not as clear-cut as it might be, it appears doubtful that there were actual drawings. In any event, the record as a whole supports the summary finding (*supra*, pp. 366-67) that "Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines."¹¹

Even if the recipients of the so-called awards *were* actually selected by chance in a drawing, this would not vitiate the foregoing finding, which is based in part on the fact that, as developed *infra*, the "awards" were fictitious. Therefore, the purpose of the drawing was not to determine "winners," as registrants were led to believe, but to develop leads for sales. By no stretch of the imagination can the operation be characterized as bona fide.

During the period of these "prize" promotions, respondent sold four different models of the Delta line—Delta 1804, Delta SZC, Delta 690, and Delta 1604—toward the purchase of which an award certificate might be applied. The sales slips evidencing respondent's sales of these sewing machines between January 1, 1965, and September 30, 1966, are in the record, together with tabulations that permit comparison of the price representations and the actual prices paid with or without the use of award certificates (CXs 29 A-36 E; Ryan 101-21). Respondent conceded the substantial correctness of these tabulations (Olson 299).

Comparison of the actual prices charged for the various Delta models in non-certificate sales with the purported customary price

¹¹ Respecting that part of the order to cease and desist (Pars. 7-9, *infra*, pp. 387-88) dealing with "drawings" and "awards," a caveat should be noted that compliance by respondent with these provisions may still leave open the question whether such promotional activities constitute unlawful lottery merchandising. (See Par. 7123, CCH Trade Regulation Reporter.) This is not an issue raised in the complaint; hence, the proposed order appended to the complaint has not been broadened to cover such a contingency. But respondent should not be misled into believing that failure to deal with the possible lottery aspects affords immunity.

appearing on the "with certificate" sales slips demonstrates that the prices represented to be the usual selling prices to holders of award certificates were not in fact the customary retail prices but were greatly in excess thereof. With rare exceptions, certificate holders paid as much as—sometimes more than—the prices paid for the same machines by ordinary purchasers who had no award certificates.

For example, the purported price of the Delta 1804 and 1804-B was \$349.95, but subject to some variations involving trade-ins, etc., most of the certificated "winners" (whether for \$150 or \$100) paid \$199.95 (CX 29 Z-2).¹² The tabulation of non-certificate sales of the same Delta models during the same period (CX 30 Z-23) discloses an occasional sale at \$349.95, but it demonstrates not only that this was not the regular price but that in fact there was no regular price.¹³ Non-certificate sales not involving trade-ins or various types of discounts ranged generally from \$149.95 to \$249.95.

The regular price of the Delta SZC was purportedly \$269.95, but certificate holders with some exceptions, paid only \$119.95 (CX 31 U).

Although the \$269.95 price shows up twice in the tabulation of non-certificate sales of model SZC (CX 32 M), it is clear that this was not the customary price. As a matter of fact, the usual price before trade-in allowances ranged between \$100 and \$139.95. The result was that many certificate holders paid net prices that were as high as if not higher than the net prices paid by customers who had not been so "favored."

A similar pattern emerges in the tabulation of Delta 690¹⁴ sales (CX 34 L). To certificate holders the price was represented as \$219.95, and their net price after deducting the \$150 award certificate was \$69.95.

Non-certificate sales of this model disclosed no such regular price of \$219.95 but ranged between \$50 and \$69.95 (CX 33 D).

Four certificate holders bought the Delta 1604. In two cases, the price was represented as \$289.95, with a net of \$139.95

¹² But see CX 29 W, indicating a purported price of \$390, to which a \$100 certificate was applied, for a net price of \$290—which was then further reduced to \$270.

¹³ Although Olson testified that he had not sold Deltas before the Home Show, which began September 25, 1965 (Olson 248, 249; CX 27), the record shows three sales of the Delta 1804 at \$249 on September 17 and 18, 1965. There also were later sales at that price. (CX 30 Z-23.) Thus, if there was a "regular" price, it was \$249; and even though the \$199.95 price did afford certificate holders a discount from the \$249 price, the purported "regular" price was still fictitious.

¹⁴ This apparently is the "De luxe Semi Push Button Budget Model" listed at \$219.95 on CX 23 and at \$159.95 on CX 26 (*supra*, p. 383).

after allowance of the \$150 discount. To a third holder of a \$150 certificate, the price was represented as \$299.95, so that this customer paid \$149.95. Finally, the stated price to a holder of a \$100 certificate was \$259.95, and he paid \$159.95. (CX 36 E.)

Again, no regular price for the Delta 1604 appeared in non-certificate sales (CX 35 J). Prices ranged from \$100 to \$299.95.

Thus, in summary, it is evident that the so-called awards were illusory. The prices represented as the respondent's usual retail prices were actually inflated and fictitious prices—greatly in excess of any price that could be construed as respondent's usual price. Generally speaking, holders of the award certificates did not receive any discounts or deductions from actual going prices but paid approximately the same net prices as those who purchased the same model in the ordinary course of respondent's business without the use of such certificates. In no case did they realize the savings purportedly represented by the certificates. The crowning irony is that some of the "winners" paid even higher prices than respondent customarily charged customers without certificates for the same makes and models.

Moreover, there was deception at the outset in connection with both the promotional "drawing" at respondent's Home Show booth and the Home Show door prize.

On the application blank used for the Delta award drawing is the statement "Nothing to Buy." Similarly, the door prize registrations were accomplished through a representation that "free prizes" were being offered. Nevertheless, holders of the award certificates and bonus certificates got no "free" prizes. These certificates were worthless unless and until they were applied toward the purchase of a sewing machine from respondent.

Recipients of the award and bonus certificates were thus led to believe that they might win free prizes with no strings attached, whereas they became entitled only to fictitious discounts on purchases from respondent.

Therefore, respondent's representations regarding the prize and price aspects of his Home Show promotions were false, misleading, and deceptive.

III. Conclusionary Findings

This record presents few factual conflicts that are dependent on a credibility evaluation. Some of respondent's self-serving statements have been rejected, particularly where they were contradicted by other evidence. But actually, as has been indicated, respondent's own statements and business records virtually es-

establish a prima facie case in support of the complaint. When such evidence is coupled with the vivid consumer testimony, the result is a convincing basis for the findings that the law has been violated as charged and for the entry of an injunctive order to prevent further violations. There is no occasion here for any special comment on credibility or on the weight of the evidence.

This is a clear case on both the facts and the law. An order to cease and desist is required to protect the public interest.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The use by the respondent of the false, misleading, and deceptive statements, representations, and practices, as found herein, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of such erroneous and mistaken belief.

4. The acts and practices of the respondent, as herein found, 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.

5. Having found the facts to be as alleged in the complaint, the examiner has entered an order substantially the same as that appended to the complaint. This represents the form of order that the Commission had reason to believe should issue if the allegations of the complaint were proved.¹⁵

ORDER

It is ordered, That respondent Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. or Consolidated Sewing Machine Co. of Washington, D.C., or under any other 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, vacuum cleaners, or any other

¹⁵ Some minor editorial changes were made.

products 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 merchandise has been left in layaway or that it is being offered for the balance of the purchase price unpaid by a previous purchaser; or misrepresenting in any manner the status, kind, quality, or price of the merchandise being offered.

2. Using the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," "National Adj.," or other names of similar import or meaning; or otherwise representing, directly or by implication, that respondent is engaged in the business of collecting debts or of adjusting or settling accounts; or misrepresenting in any manner the nature or status of respondent's business.

3. Representing, directly or by implication, that purchasers save the paid-in amount on unclaimed layaway merchandise; or misrepresenting in any manner the savings afforded purchasers of respondent's products.

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

5. 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 such products or services on the terms and conditions stated; or using any advertising, sales plan, or procedure involving the use of false, deceptive, or misleading statements to obtain leads or prospects for the sale of other merchandise.

6. Disparaging in any manner or discouraging the purchase of any products advertised.

7. Representing, directly or by implication, that names of winners are obtained through "drawings" 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.

8. 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 prizes or awards.

9. Representing, directly or by implication, that any savings, discount, or allowance is given purchasers from respondent's selling price for specified merchandise unless such

selling price is the amount at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent regular course of his business.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 27th day of March, 1967, become the decision of the Commission.

It is further ordered, That Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

IN THE MATTERS OF

EARL MARCUS (Docket C-1187)
SAMUEL KAMENS (Docket C-1188)
HERMAN MARCUS (Docket C-1189)

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION, THE WOOL PRODUCTS LABELING
AND THE FUR PRODUCTS LABELING ACTS

*Complaints, Mar. 30, 1967—Decisions, Mar. 30, 1967**

Consent orders requiring three retailers of fur and wool products to cease misbranding and falsely invoicing their fur products and unlawfully removing required labels from their wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said

* Similar complaints and orders were consolidated by compiler.