

IN THE MATTER OF
STANDARD SEWING EQUIPMENT CORPORATION AND
WILLIAM J. HACKETT AND HARRY KRON

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket 5888. Complaint, July 13, 1953¹—Decision, May 2, 1955

Order requiring an importer in New York City of sewing machine heads on which appeared the words "Made in Occupied Japan" or "Japan," and of completed sewing machines in the assembling of which those words on the heads were concealed by attachment of the motor, to cease offering their products for sale without clear and conspicuous disclosure of the country of origin of the heads, and to cease using the brand or trade name "Universal" without using in connection therewith in legible and clearly visible marking their corporate name.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William L. Taggart and *Mr. Ames W. Williams* for the Commission.

Schnader, Harrison, Segal & Lewis, of Philadelphia, Pa., and *Holtz & Rose*, of Boston, Mass., for respondents.

Carretta & Counihan, of Washington, D. C., also represented Standard Sewing Equipment Corp. and William J. Hackett.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in this proceeding upon respondents, Standard Sewing Equipment Corporation, a corporation, and William J. Hackett and Harry Kron, individually and as officers of said corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hear-

¹ As amended.

1012

Findings

ing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Standard Sewing Equipment Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 114 W. 27th Street, New York, New York. Respondents William J. Hackett and Harry Kron, are President and Secretary-Treasurer, respectively, of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation, their addresses being the same as that of the corporate respondent. There is no other officer, employer, agent or representative of corporate respondent, who has any control, authority or responsibilities over its acts and practices.

PAR. 2. Respondents are now and have been for several years last past, engaged in the sale of sewing machine heads imported from Japan by them, and of completed sewing machines of which such heads are a part, to retailers who, in turn, resell to the purchasing public. In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in the various other States, and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents first began the importation of these sewing machine heads manufactured in Japan in the early months of 1949. Such machines had a gold decalcomania embossed or imprinted on the black enamel of the sewing machine head, reading "Japan" or "Made in Occupied Japan" just above the bed plate of the head on the rear of the vertical arm. These sewing machine heads are designed for electrical operation and when a motor is attached thereto at the only place provided for it, on the rear of the vertical arm, the aforesaid decalcomania marking, showing the origin of the machine head, is effectively concealed from even careful inspection, short of removing the motor, or of turning the machine into an awkward and unusual position, from the ordinary user's standpoint, which action would

Findings

51 F. T. C.

eventuate only from a desire to see that particular spot but entirely unlikely to ensue from ordinary or normal use of the machine. There is substantial evidence in the record, that purchaser-users never saw this concealed marking, or suspected the foreign origin of their purchases, at least until it was called to their attention by someone familiar with these machines and the marking. The finding is that such marking is for practical purposes, and to the ordinary user or purchaser, completely and effectively concealed.

PAR. 4. Sometime prior to June 1, 1949, the Bureau of Customs of the U. S. Treasury wrote corporate respondent that it was necessary in order for these above-described machine heads to pass through customs legally, that it require that the marking indicating the country of origin, appear on the face of the machine in a place where it was not likely to be defaced, covered, or obscured by combination with any other article, that the method of marking should be legible, indelible and permanent, and the approved forms of marking included die stamping, the use of a metal plate bearing the name of the country of origin, and stamping, or the use of the type of decalcomania which is not readily removed by ordinary washing with normal solvents. Thereafter respondents adopted, with the approval of the Customs authorities, a metal medallion, hexagonal or oval in shape about 1½ inches vertical and 1 inch horizontal, in gold or brass finish, bearing the legend "De Luxe" in raised quarter inch letters, and below that "De Luxe Family Sewing Machine Quality" in raised letters approximately ⅛" in length, and below that the word "Japan" in raised letters of approximately ¼" in length, and ordered their Japanese suppliers to attach them to all machines by rivets in the front of the vertical arm. Since the middle part of 1949 all sewing machine heads imported by respondents have been so marked.

PAR. 5. These brass or brass-colored medallions or plaques are in bright gold color, in small raised letters only of the same color, with no background coloring to emphasize the raised letters, so that the word "Japan" is indistinct, difficult to read at a distance of greater than a foot, unemphasized and distinguishable only by careful inspection. There is also sufficient evidence in the record that users and purchasers did not see, or seeing, did not comprehend such marking.

PAR. 6. When this marking is taken with the additional facts that the motor attached by respondents to these machines bear metal labels reading "Universal—Made in U. S. A.," "Delco—Made in Rochester, N. Y.," "Simplex—Made in U. S. A." or "Universal sewing machine motor—made in U. S. A.," which labels are plainly legible and conspicuous when the machine head is viewed from above; that the book

of instructions given when the machine is sold to consumers, nowhere mentions the place of manufacture of the machine, that the two examples of periodical advertising by the respondent themselves in the record, and that five of the seven examples of dealer advertising, in some instances partially subsidized by respondents nowhere mention importation or the origin of the machine and that the brand name "Universal" appearing on the front and across the top of the horizontal arm, conspicuous and legible at many feet distance, is part of the corporate name, or is the brand name of a number of American concerns, manufacturing and selling in the United States, some of them nationally known, it is plain that many consumer-purchasers would be, and are deceived into the belief, as the record shows, that respondents' Universal sewing machines are made in the United States. The finding accordingly, is that respondents' imported sewing machines and sewing machine heads, are not adequately marked to show their place of manufacture or origin.

PAR. 7. The facts that respondents at no time directly represented their imported sewing machines as being made in the United States, or would refuse to sell any dealer who did so, or that respondents' dealers are under no misapprehension as to the place of manufacture or origination or that respondents have never received any complaint as to customer confusion as to place of origin are immaterial. Respondents by placing in the hands of these dealers, their sewing machines as hereinabove described have provided those dealers with the means and instrumentality whereby the purchasing public may be, and is, misled and deceived as to the place of origin of said machines. This is emphasized by the substantial evidence in the record that these riveted medallions or plaques can be removed with comparative ease, without the marks of removal being discernible except upon the closest inspection. Even the rivet holes can be filled in with a black filler. There is also substantial evidence in the record that even when such holes are left gaping, that users took such holes to be for oiling the machine rather than to indicate the removal of something originally a part of the machine.

PAR. 8. Not all, but a substantial portion of the purchasing public has a decided preference for products of domestic manufacture over those of foreign make, particularly machinery of any kind, and when sewing machines are exhibited and offered for sale to the purchasing public and such articles are not marked at all, or are inadequately marked to show their foreign origin, or if marked and the markings are concealed, removed, or obliterated, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 9. The complaint alleges and the evidence shows that respondents' invoices and form letters which go to respondents' dealers (respondents do not deal with the consuming public) bear the legend "Manufacturers and wholesale distributors sewing machines and supplies" immediately beneath corporate respondents' name and that respondents do no manufacturing and neither own nor control any factory. The complaint further alleges that substantial numbers of retailers prefer to buy products from concerns who manufacture the products sold by them. Of this there is no substantial evidence in the record. Although two of respondents' dealers were witnesses in this proceeding, nothing on this point was asked them. These dealers know that respondents' sewing machines were made in Japan and for aught that appears may have likewise been aware that respondents bought them rather than manufactured them, or may have been wholly indifferent.

PAR. 10. Corporate respondent was organized in 1946, for the purpose of selling in the United States imported sewing machines, it being the first importer to do so, and for approximately two years it imported and sold in the United States the English made "Jones" under that name. Being unable to secure sufficient of these machines, corporate respondent turned to an Italian factory from which it imported sewing machines for a short time in 1948. These machines had a foreign brand name, which respondents decided would hamper rather than aid domestic merchandising and considered the adoption and use first of the name "Standard," but learned upon attempting to register it as a trade-mark "that there were some complications" and thereupon decided on "Universal" as a trade name. The latter name, however, had been registered as a trade-mark by the White Sewing Machine Company of Cleveland, Ohio, for use on sewing machines, but apparently it had not been so used for a number of years. Respondents' attorneys succeeded in having the registration cancelled for non-user by the U. S. Patent Office and on April 4, 1950, the latter issued a trade-mark registration to respondents for the name Universal to be used on sewing machines and it was thereafter put on a majority of the sewing machine heads which respondents imported from Japan by respondents' vendors in Japan, by gold decalomania across the front, and sometimes also on the top of the horizontal arm. Respondents since that time have prevented by some 25 legal actions the use of this brand name "Universal" on sewing machines marketed by others, and have undertaken to have their dealers listed in the classified section of telephone directories all listed under the brand name of Universal sewing machines, as well as regis-

tering each brand name in foreign countries where respondents have dealers.

PAR. 11. The brand name "Universal" appearing frequently but not always surrounded by a line tracing suggestive of a dog bone in shape, has also been registered by the U. S. Patent Office in favor of Landers, Frary & Clark of New Britain, Connecticut, for use on a wide variety of kitchen and household appliances, the original registrations dating back as far as 1906, 1914 and 1916 and the more recent registrations applicable to electrical household appliance being dated in 1933 and since. This firm advertises and sells nationally and extensively through dealers; electric toasters, coffee pots, food mixers, blenders, irons, grills, waffle irons, heating pads, small stoves, blankets, vacuum sweepers, floor polishers, and other household gadgets collectively known as light traffic appliances. These products are extensively advertised, widely sold through thousands of retail distributors and are well and favorably known to a very substantial portion of the purchasing public, particularly the feminine part thereof. The name "Universal" is stamped on many of these products unsurrounded by any dog-bone etching. Neither at the time of respondents' second registration as a trade-mark of the name "Universal" for use on their sewing machines, nor since, did Landers, Frary & Clark file or make any protest. Respondent Hackett testified that he had had some negotiations with the Universal Major Electrical Appliance Company of Lima, Ohio, manufacturers and distributors of the heavier household electrical appliances such as washers, dryers, water heaters, stoves, under the brand name of "Universal" by agreement with Landers, Frary & Clark, as to the former acting as distributor for respondents' Universal sewing machines. Neither it nor Landers, Frary & Clark have ever manufactured or sold sewing machines nor do they have their brand name registered for use on sewing machines. Landers, Frary & Clark also distributes vacuum bottles, food choppers, vacuum cleaners, food freezers and coffee makers under other brand names than "Universal."

PAR. 12. In addition to this, respondents have shown there are some 356 listings in the Manhattan telephone directory of corporations or organizations part of whose business name is the word "Universal" and some 85 similar listings in the Philadelphia telephone directory: that the U. S. Patent Office has issued trade-mark registrations to 64 business concerns throughout the country for the brand name "Universal" of which five are to Landers, Frary & Clark and of which three, other than respondents, are to concerns using such trade names on sewing machines and that there are eighteen state registrations of this trade name in twelve states, although none on sewing machines.

