

5. Authorizing any creditor to utilize respondent's name or any trade name or style which respondent may adopt or use in connection with any debt collection activity whether directly or through third parties on the part of such creditor;

6. Representing directly or by implication that:

(a) Respondent is engaged in the business of collecting delinquent accounts with authority to effect collection by whatever means necessary;

(b) Any delinquent account has been referred to it for collection;

(c) Any legal or other action will be instituted to effect collection or reflect unfavorably on the credit rating of the debtor;

Provided, however, It shall be a defense hereunder for respondent to establish that it is engaged in the bona fide collection of delinquent accounts, has the authority and good faith intent to take any represented action, and the specific account in question has been referred to it for collection;

7. Engaging in any scheme, practice or business activity by and through which creditors may falsely represent that a delinquent account has been referred to a bona fide, independent collection agency; any third party has the authority to effect collection of a delinquent account; the delinquent account has been referred to an instrumentality of or agency affiliated with any governmental unit.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

SEWING MACHINE COMPANY OF AMERICA DOING
BUSINESS AS DOMESTIC CREDIT COMPANY ET AL.

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

Docket 8693. Complaint, July 13, 1966—Decision, April 5, 1967

Order requiring a St. Paul, Minnesota, sewing machine retailer to cease using bait advertising, fictitious pricing and savings claims and other deceptive selling practices as set forth in the order below.

Complaint

71 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sewing Machine Company of America, a corporation, doing business as Domestic Credit Company, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota. Respondents Eldon J. Metaxas and Ralph T. Corrigan are individuals and officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The offices and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota.

Respondents, at times, trade under the name of Domestic Credit Company.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines to the public.

PAR. 3. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms and conditions of sale of their products.

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

Singer—console cabinet. This famous make sewing machine is equipped to zig-zag, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of \$44.00. \$5.50 discount for cash. Write: Credit Manager, Domestic Credit, 1538 West Larpenteur, St. Paul, Minnesota.

PAR. 5. By and through the use of aforesaid statements and representations, and others of similar import not specifically set out herein, by oral statements and representations of their salesmen, and by the use of the trade name Domestic Credit, separately and in connection with such statements and representations, the respondents represent, and have represented, directly or by implication:

1. That their principal business is that of lending money, providing credit to purchasers of merchandise, and buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit.

2. That as a finance company they are making a bona fide offer to sell a repossessed sewing machine, as described in said advertisement, for reason of default in payments therefor by the previous purchaser, and on the terms and conditions stated.

PAR. 6. In truth and in fact:

1. The respondents principal business is not that of lending money, or providing credit to purchasers of merchandise, or buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit. Respondents are engaged in the business of selling sewing machines to the public.

2. The respondents are not a finance company making a bona fide offer to sell a repossessed sewing machine as described and on the terms and conditions stated, but said offer was and is made for the purpose of obtaining leads and information as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondents, or their salesmen, call upon such persons, but make no bona fide effort to sell said sewing machine which was and is manifestly unsuitable, undesirable and not the product described in their advertisement, after which they attempt to and frequently do sell a different and higher priced product.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their sewing machines, respondents, or their salesmen, have made numerous

oral statements with respect to higher and lower prices of their sewing machines and the resultant savings to purchasers.

By and through the use of said statements with respect to the prices of their sewing machines, respondents have represented, directly or by implication, that their products are being offered for sale at special or reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

PAR. 8. In truth and in fact, the respondents' products are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

Therefore, the statements and representations referred to in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sewing machines of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. William A. Somers and Mr. Harold G. Sodergren supporting the complaint.

Mr. Thomas M. Murphy, Kempe & Murphy, West Saint Paul, Minn., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

FEBRUARY 23, 1967

PRELIMINARY STATEMENT

By its complaint, issued July 13, 1966, the Federal Trade Commission charged respondents with using deceptive means to sell sewing machines in violation of Section 5 of the Federal Trade Commission Act.

The deceptive means charged were: 1) respondents, by using the name Domestic Credit Company and by their advertising, created the false impression that their principal business was lending money rather than selling sewing machines; 2) the advertised offers of machines were bait to obtain leads to persons interested in purchasing sewing machines, because the respondents made no bona fide effort to sell the advertised machines but instead attempted to sell a more expensive machine; 3) respondents also misrepresented that their sewing machines were sold at a special or at reduced prices. In fact, respondents did not have a regular selling price, as their prices vary from customer to customer.

In addition, the complaint identified respondents, stated the relationship between them, and made the usual jurisdictional allegations, including the allegation that respondents are in commerce and the acts charged take place in commerce.

Respondents' answer, filed August 15, 1966, admitted the state of incorporation of Sewing Machine Company of America and it admitted that Eldon J. Metaxas was an officer thereof; but respondents' answer denied that the corporate respondent did business as Domestic Credit Company or that Ralph T. Corrigan was an officer of corporate respondent. (Respondents, during pretrial, admitted that the corporate respondent did business as Domestic Credit Company. During the hearing Eldon J. Metaxas testified that Ralph T. Corrigan was secretary-treasurer of the corporate respondent during 1964 and 1965, but dropped out as secretary-treasurer shortly after the Commission issued its complaint, although he continued as a salesman (Tr. 301-302).) Respondents also admitted the jurisdictional allegations of the complaint, but generally denied the other allegations.

This case was first assigned to Honorable Joseph W. Kaufman, who conducted a prehearing conference, certified the necessity of holding hearings in more than one place to the Commission who approved. He then entered a prehearing order dated September

14, 1966. This order fixed the dates and places of the hearings and provided for discovery of the names of witnesses and for the production of documents. The undersigned was substituted for Mr. Kaufman on October 12, 1966, and heard the evidence.

Hearings commenced Monday, December 5, 1966, at Rockford, Illinois, and continued there on two successive days. After a day's interval for travel, hearings resumed first at Mason City, Iowa, on Thursday and Friday, December 8 and 9, 1966, and then at Minneapolis, Minnesota, on Monday, December 12, 1966; all pursuant to the Commission's order, dated September 8, 1966, that modified Rule 3.16 of the Rules of Practice.

At the conclusion of counsel's case, counsel for respondents moved to dismiss. Ruling was then reserved (Tr. 307). The motion is now denied.

This Initial Decision is based on the record as a whole and on the demeanor of the witnesses. References¹ to particular parts of the record are cited as examples only. Proposed findings of fact and conclusions of law submitted by counsel supporting the complaint and not included herein in substance or in the language proposed are rejected as immaterial, irrelevant, or erroneous. Respondent by letter dated January 18, 1967, waived submission of findings and conclusions. The following findings of fact, conclusions, and order are made.

FINDINGS OF FACT

A. Respondents and Their Business

1. Respondent Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota. Respondent Eldon J. Metaxas is an officer of corporate respondent. Respondent Ralph T. Corrigan is a salesman who had been secretary-treasurer of corporate respondent during 1964 and 1965 but had dropped out as an officer shortly after the Commission issued its complaint. He has since continued with the corporation as a salesman (Tr. 301-302). Metaxas directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. While an officer Corrigan also directed and controlled the acts and practices of corporate respondent (Tr. 301-302). The office and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota (C; A).

¹ The following abbreviations will sometimes be used: C=Complaint, A=Answer, Tr.=Transcript page, CX=Commission's Exhibit, RX=Respondents' Exhibit.

2. Respondents, at times, trade under the name of Domestic Credit Company. That company is a division of the corporate respondent (Tr. 300-301). (Prehearing Order dated September 14, 1966.)

3. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of sewing machines to the public (C; A).

4. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold, to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintain and, at all times mentioned herein, have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act (C; A).

5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms, and conditions of sale of their products (C; A).

6. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of sewing machines of the same general kind and nature as those sold by respondents (C; A).

B. The Use of the Name Domestic Credit Company Charge

1. In connection with their business, respondents have caused advertisements in newspapers of general circulation to be run for the purpose of inducing the purchase of their products (C; A).

2. A typical advertisement showing the character of the statements and representations made is the following:

Singer—console cabinet. This famous make sewing machine is equipped to zig-zig, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of \$44.00. \$5.50 [per month or] discount for cash. Write Credit Manager, Domestic Cred, 1538 West Larpenteur, St. Paul, Minnesota. (Brackets were added on basis of testimony of respondent Metaxas that the advertisement contained a misprint (CX 50, 54; Tr. 302-303)).

3. Similar advertisements were ordered by the corporate respondent in newspapers of general circulation in rural areas in

