

Syllabus

IN THE MATTER OF

STATE SEWING MACHINE CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5895. Complaint, June 27, 1951—Decision, Mar. 8, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and are not marked, or are not adequately marked, showing that they are of foreign origin, or if markings are covered or otherwise concealed, such public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products, including sewing machine heads, originating in the United States, over such products originating in whole or in part in foreign countries.

Where a corporation and its three officers, engaged in the importation from Japan of sewing machine heads upon which there appeared the words "Made in Occupied Japan" or "Japan," and in the attachment to said heads of a motor, in the process of which the aforesaid words were covered and so were no longer visible, and in the sale of said products in commerce in competition with makers and sellers of domestic sewing machines and with sellers of imported machines, some of whom adequately informed the public as to the source of their said products—

- (a) Failed adequately to disclose on the said sewing machine heads—some of which were marked with a medallion upon which appeared, in small and indistinct words, "Made in Occupied Japan" or "Japan"—that said products were made in Occupied Japan; with result of placing in the hands of dealers a means to mislead and deceive the purchasing public as to the place of origin of said heads, and with tendency and capacity to lead substantial numbers of the purchasing public into the erroneous belief that their said products were of domestic origin, and with result of thereby causing substantial numbers thereof to purchase such machines, and thereby substantial trade and commerce was diverted unfairly to them from their competitors, to the substantial injury of competition in commerce; and
- (b) Without disclosing the terms and conditions of the guarantee, made such confusing and misleading statements in their advertising as "guaranteed" or "lifetime guarantee" and "State with the Lifetime Guarantee":

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. Norman Kaliski, of New York City, for respondents.

Complaint

48 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 State Sewing Machine Corporation, a corporation, and Lazare Gelin, Sydel M. Empel, William J. Melson, and Dorothy B. Gelin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, State Sewing Machine 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 11 West 42nd Street, New York, New York. Respondents Lazare Gelin, Sydel M. Empel, William J. Melson and Dorothy B. Gelin are President and Treasurer, Secretary, Vice President, and Vice President, respectively, of corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been for several years last past engaged in the sale of sewing machine heads imported by them from Japan and complete sewing machines of which said heads are a part to distributors and also to retailers who in turn sell 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 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. When the sewing machine heads are imported by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 6. Respondents in their advertising make such statements as the following:

Guarantee Bond Lifetime Guarantee
State with the Lifetime Guarantee

The use of the words "guaranteed" or "lifetime guarantee" without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive practice.

PAR. 7. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 8. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 9. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Occupied Japan has the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and causes substantial numbers of the purchasing public to purchase sewing machines of which said heads are a part because of their erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 8, 1952, the initial decision in the instant matter of Hearing Examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, 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 the above-entitled proceeding upon the respondents State Sewing Machine Corporation, a corporation, and Lazare Gelin, Sydel M. Empel, William J. Melson and Dorothy B. Gelin, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On August 22, 1951, respondents filed an answer to said complaint. Thereafter, on October 30, 1951, at a hearing held in New York, New York, a motion was made and granted on behalf of respondents to withdraw the answer previously filed herein and to substitute therefor an answer, which was thereupon read into the record, admitting all of the material allegations of fact set forth in said complaint, except that it was stated therein that the respondent Sydel M. Empel was Secretary of the respondent corporation only until about May 1, 1951. Said answer reserved the right to submit proposed findings and conclusions and to appeal from the initial decision herein. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner theretofore duly designated by the Commission upon said complaint and answer thereto, proposed findings and conclusions submitted by counsel for respondents, oral argument thereon not having been requested and no proposed findings having been submitted by counsel supporting the complaint; 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, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent State Sewing Machine 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

941

Findings

located at 11 West 42nd Street, New York, New York. Respondents Lazare Gelin, William J. Melson and Dorothy B. Gelin are President and Treasurer, Vice President, and Vice President, respectively, of the corporate respondent and, acting as such officers, formulate direct and control the policies, acts and practices of said corporation. The address of said individual respondents is the same as that of the corporate respondent.

Respondent Sydel M. Empel ceased to be employed as the Secretary of the respondent corporation on or about May 1, 1951.

PAR. 2. Respondents have been for several years last past engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. In the course and conduct of their business, respondents caused their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States, 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 substantial.

PAR. 3. When the sewing machine heads were imported by respondents, the words "Made in Occupied Japan" or "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach a motor to the head, in the process of which the aforesaid words were covered by the motor so that they were not visible. In some instances said heads when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appeared. These words were, however, so small and indistinct that they did not constitute adequate notice to the public that the heads were imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 5. There is among the members of the purchasing public a substantial number who have a decided preference for products, including sewing machine heads, originating in the United States, over such products originating in whole or in part in foreign countries.

Order

48 F. T. C.

PAR. 6. Respondents in their advertising made such statements as the following:

Guarantee Bond
Lifetime Guarantee
State with the Lifetime
Guarantee.

The use of the words "guaranteed" or "lifetime guarantee" without disclosing the terms and conditions of the guarantee were confusing and misleading to the public and purchasers and constituted an unfair and deceptive practice.

PAR. 7. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provided said dealers a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 8. Respondents, in the course and conduct of their business, were in substantial competition in commerce with the makers and sellers of domestic sewing machines and also with sellers of imported machines, some of whom adequately informed the public as to the source of origin of their said product.

PAR. 9. The failure of respondents adequately to disclose on the sewing machine heads that they were manufactured in Occupied Japan had the tendency and capacity to lead substantial numbers of the purchasing public into the erroneous and mistaken belief that their said product was of domestic origin and caused substantial numbers of the purchasing public to purchase sewing machines of which said heads were a part, because of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

CONCLUSION

The acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, State Sewing Machine Corporation, a corporation, Lazare Gelin, William J. Melson and Dorothy B. Gelin, individually and as officers of said corporation, and said respondents' representatives, agents and employees, directly or through

941

Order

any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof;

2. Representing, directly or by implication, that their sewing machine heads or sewing machines are sold under a lifetime guarantee, or that they are otherwise guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Sydel M. Emple, without prejudice to the right of the Commission to institute further proceedings against her, should future facts so warrant.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 8, 1952].

Complaint

48 F. T. C.

IN THE MATTER OF

JERROLD A. ROWLEY AND STANLEY EISENBERG TRADING AS RICHARD DONIGAN AND DISCOUNT SALES COMPANY

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5726. Complaint, Dec. 20, 1949—Decision, Mar. 10, 1952

Where an individual engaged in the interstate sale and distribution of radios, fountain pens and other articles—

- (a) Made use of sales promotion plans pursuant to which he mailed to large numbers of prospective purchasers throughout the United States, advertisements of a table radio, order blanks, explanatory letters and push cards for use in accordance with a scheme whereby the cost of a "push" was determined by the chance number secured, persons selecting by chance the feminine name corresponding with that concealed in the card's master seal received one of the radios, persons securing two specified numbers received ball point pens, others received nothing, and the purchaser of the assortment for the approximate amount realized from the sale of the punches became entitled, upon the remission thereof, to the second radio included therewith; and
- (b) Shipped and delivered, in response to hundreds of orders received as a result of the aforesaid mailing, radios and ball points to purchasers located throughout the United States; and

Thereby supplied to and placed in the hands of purchasers of his merchandise the means of conducting lotteries or games of chance in connection with the resale or distribution thereof, in contravention of an established public policy of the United States Government; in the violation of which he thus assisted and participated:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices.

Before *Mr. Clyde M. Hadley*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

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 Jerrold A. Rowley and Stanley Eisenberg, individuals and co-partners trading as Richard Donigan and Discount Sales Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto

Complaint

would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jerrold A. Rowley and Stanley Eisenberg are individuals and co-partners trading and doing business under the trade names, Richard Donigan and Discount Sales Company, with their office and principal place of business located at 110 West 42nd Street in the city of New York, New York.

Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of radios, fountain pens and other articles of merchandise and have caused said merchandise, when sold, to be transported from their places of business in the city of New York, New York to purchasers thereof at their respective points of location in the various States of the United States other than New York and in the District of Columbia. There is now, and has been for more than two years last past, a course of trade in such merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in Paragraph One hereof respondents in soliciting the sale of and in selling and distributing their merchandise furnish and have furnished various plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing and consuming public. One method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to operators and to members of the public certain literature and instructions including among other things push cards, order blanks, circulars including thereon illustrations and descriptions of said merchandise and a circular explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums or prizes to the operators of said push cards and to members of the purchasing and consuming public. One of the respondents' said push cards bears 80 feminine names with ruled columns on the back of said card for writing in the name selected. Said push card has 80 partially perforated discs. Each of said discs bears one of the feminine names corresponding to those on the list. Concealed within each disc is a number which is disclosed only when the customer pushes or separates a disc from the card. The push card also has a larger master seal and concealed within the master seal is one of the feminine names appearing on the disc. The person selecting the name corresponding

Complaint

48 F. T. C.

to the one under the master seal receives a camera. The push card bears the following legend or instruction :

NAME UNDER SEAL RECEIVES A
BEAUTIFUL SHERATON RADIO
NEW

Amazing Performance—Beautiful Appearance

RCA licensed superheterodyne radio	Nos. 22 & 33 each receive a
Multi-power tubes, including beam power output tube	handsome ALAMAC BALL POINT PEN.
Permanent magnetic speaker with magnifi- cent tone and volume	1¢ to 39¢ NO HIGHER
Durable plastic cabinet of modern design	Nos. 1 to 39 Pay What is
Plays anywhere on AC or DC	Drawn. Nos. over 39 pay only 39¢.

PUSH OUT WITH PENCIL

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions and said prizes or premiums are allotted to the customer or purchaser from said card in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described varying only in detail.

PAR. 3. The persons to whom respondents furnish and have furnished said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondents Jerrold A. Rowley and Stanley Eisenberg charging said respondents with violation of the provisions of that Act. An answer to said complaint was filed by respondent Jerrold A. Rowley but no answer was filed by respondent Stanley Eisenberg. Testimony and other evidence in support of the complaint were then introduced before a hearing examiner of the Commission theretofore duly designated by it, and such 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 the said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, and the hearing examiner having duly considered the record, on December 28, 1950, filed his initial decision herein with the Commission.

Within the time permitted by the Commission's Rules of Practice, counsel for respondent Jerrold A. Rowley filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the

appeal and oral argument of counsel; and the Commission, having issued its order granting said appeal in part and denying it in part, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jerrold A. Rowley is an individual, with his office and principal place of business at 110 West 42nd Street, New York, New York. Prior to October 31, 1947, respondents Jerrold A. Rowley and Stanley Eisenberg were partners trading as Richard Donigan and Discount Sales Company, with their office and principal place of business at the same address. This partnership was discontinued as of October 31, 1947. Respondent Stanley Eisenberg has had no connection with the acts and practices alleged in the complaint herein.

PAR. 2. Respondent Jerrold A. Rowley, trading under the name Richard Donigan, in the latter part of 1947 and the early part of 1948 engaged in the sale of radios, fountain pens and other articles of merchandise and caused said merchandise, when sold, to be transported from his place of business in the State of New York to purchasers thereof in other States of the United States, maintaining a course of trade in such merchandise between the State of New York and the various other States of the United States. Since that time respondent Jerrold A. Rowley has engaged in the manufacture and sale of novelty merchandise under the name of Discount Sales Company.

PAR. 3. In the course and conduct of his said business of selling merchandise in commerce under the name Richard Donigan, respondent Jerrold A. Rowley on two separate occasions mailed lottery devices designed for use in the resale of his merchandise to a large number of prospective purchasers located throughout the United States. On one of these occasions he mailed to 50,000 such prospective purchasers sales promotional literature consisting of a push card, a circular advertising a table model radio, an order blank and a form letter describing respondent's sales promotional scheme. This form letter stated that by purchasing two radios and two ball point pens from said respondent for \$29.95, selling all of the chances on the enclosed push card and distributing one of the radios and both of the ball point pens to the persons selecting the winning punches in accordance with the instructions on the push card, the purchaser could keep the second radio at practically no cost to himself. The total amount received from the

sale of punches approximately equalled the total purchase price of the merchandise of \$29.95.

The push cards which were enclosed in the letters carried the following legend and instructions:

NAME UNDER SEAL RECEIVES A

BEAUTIFUL SHERATON RADIO

NEW

Amazing Performance—Beautiful Appearance

RCA licensed superheterodyne radio	Nos. 22 & 23
Multi-power tubes, including beam power output tube	each receive a handsome
Permanent magnetic speaker with magnificent tone and volume	ALAMAC BALL POINT PEN.
Durable plastic cabinet of modern design	1¢ to 39¢—
Plays anywhere on AC or DC	NO HIGHER
	Nos. 1 to 39 Pay
	What Is Drawn.
	Nos. over 39 pay
	only 39¢.

PUSH OUT WITH PENCIL

Write your name on the reverse side opposite the name you select.

Each card contained eighty squares which were each inset with a small round detachable disc bearing a feminine name clearly displayed. In addition it contained the large red seal, referred to in the legend above, which concealed the winning feminine name. Additional instructions are set out on the reverse side of the card. If the push card is operated in accordance with these instructions, a purchaser of a chance selects and punches out one of the small discs. He then writes his own name on the reverse side of the card opposite the feminine name on the disc he selected. The amount he pays for the chance is determined by the figure concealed under the disc he punched out. If that number is either 22 or 23, he wins one of the ball point pens. After all of the punches have been sold, the radio is received by the person who punched out the disc containing the feminine name concealed under the large seal. Whether a purchaser of a chance receives one of the articles of merchandise or receives nothing for the amount paid, and the amount he pays for the chance itself, are both determined purely by lot or chance.

Respondent Jerrold A. Rowley received between 400 and 500 orders for radios and ball point pens in response to the above-described mailing. This merchandise, sold upon these orders, was shipped and delivered from the State of New York to the purchasers thereof located

Order

48 F. T. C.

throughout the other States of the United States. The other mailing of lottery devices by this respondent to other prospective purchasers was made in a substantially similar manner as the mailing above described, varying from it only in minor details.

Respondent Jerrold A. Rowley, trading under the name Discount Sales Company, is presently engaged in the sale of novelty merchandise in connection with the sale of some of which he gives lottery devices to the purchasers thereof.

PAR. 4. Respondent Jerrold A. Rowley, trading as Richard Donigan in the manner above described, supplied to and placed in the hands of purchasers of his merchandise the means of conducting lotteries or games of chance in connection with the resale or distribution of such merchandise. The sale of merchandise by and through such means is a practice which is in contravention of an established public policy of the Government of the United States and this respondent, through the supplying of such means, in commerce, assisted and participated in the violation of such policy.

CONCLUSION

The acts and practices of respondent Jerrold A. Rowley, trading under the name of Richard Donigan, as hereinabove found, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Jerrold A. Rowley, trading as Richard Donigan, or Discount Sales Company, or under any other name or designation, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other lottery devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

2. Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent Stanley Eisenberg.

948

Order

It is further ordered, That respondent Jerrold A. Rowley, an individual, 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.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion in Docket No. 5203, Worthmore Sales Company.¹

¹ 46 F. T. C. 606.

IN THE MATTER OF
SAMUEL COHEN AND IRWIN H. FISHER TRADING AS
MONROE SALES COMPANY

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5782. Complaint, May 31, 1950—Decision, Mar. 10, 1952

Where two partners engaged in the interstate sale and distribution of watches, novelties and other articles, some at wholesale but by far the greater portion direct to members of the public, through traveling salesmen, mailed circulars, and recommendations of customers—

Sold much of their merchandise in the form of such typical assortments as two watches, two cigarette case and compact sets, together with a recording card and punchboard, for use in the resale and distribution of said products by the assortment's purchaser under a plan whereby the person who punched by chance the number corresponding to that of the "star punch", received a watch, those who punched two specified numbers received the compact and cigarette case sets, price of the particular punch was determined by chance, those who did not punch a lucky number received nothing further, and the operator-purchaser remitted the proceeds in payment for the assortment, retaining the second watch as his own prize or profit:

Held: That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair acts and practices.

As respects contentions by way of defense that the only relation between respondents and the persons who resold their merchandise was that of seller and purchaser; that the purchaser was under no compulsion to use the punchboard and was entirely free to dispose of the merchandise as he saw fit subject to remission of the agreed purchase price; that the board, like the other articles, was sold separately as an item of merchandise;

Said position overlooked the fact that the entire merchandising plan contemplated the use of the punchboard by the purchaser of the assortment, and the resale or distribution of the assortment to the public by means of a lottery or game of chance since, aside from testimony as to actual instances in which the punchboard was so used, the nature of the transaction and the supplying by respondents of the lottery device which could serve no other purpose made such a conclusion inescapable.

In said connection the further fact that the price of the assortment included a specified amount, for punchboard and card, as contended, was immaterial, and while the fact that respondents did not sell the assortment to minors, but only to mature and responsible persons regarded by them as acceptable credit risks, was a mitigating circumstance, it did affect the legal principle involved.

As respects respondents' contention that the entire proceeding was fatally defective because the complaint did not charge, nor the evidence establish, that their merchandising plan was an unfair method of competition or that there was any injury to their competitors as a result of its use; it is no longer necessary, since the adoption of the Wheeler-Lea Amendment, to allege or

Complaint

prove in such a proceeding as the instant one, evidence of competition or any injury thereto, and the present complaint proceeded upon the theory that the practice of a seller of merchandise of placing in the hands of others lottery devices for use in the sale and distribution of such merchandise to the public, is an unfair act or practice which promotes and encourages gambling and is in contravention of public policy.

Before *Mr. William L. Pack*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Alfred L. Bennett, Mr. Wilbur N. Baughman and *Mr. James Perkins Parker*, of Washington, D. C., for respondents.

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 Samuel Cohen and Irwin H. Fisher, individuals and partners trading as Monroe Sales Company, hereinafter referred to as respondents, have violated the provisions of the 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. Respondents Samuel Cohen and Irwin H. Fisher are individuals and partners trading and doing business as Monroe Sales Company, with their office and principal place of business located at 32 South Street, in the city of Baltimore, Maryland. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of watches, novelties and other articles of merchandise and have caused said watches, novelties, and merchandise when sold to be transported from their place of business in the city of Baltimore, Maryland, to purchasers thereof at their respective points of location in the various States of the United States other than Maryland and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondents in such merchandise, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in Paragraph One hereof, respondents sell and have sold to dealers and members of the public certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when such merchandise is sold and distributed to the purchasing public; and have furnished various plans of merchandising which involve the operation of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold

and distributed to the purchasing and consuming public. One method or sales plan adopted and used by the respondents is substantially as follows:

Respondents advertise in certain periodicals having a general circulation in various States of the United States for salesmen and through them sell certain merchandise deals consisting of punch boards and merchandise and push cards and merchandise. Respondents also sell directly to members of the purchasing public these deals, of which a typical one is described as follows:

The punch board deal sold by respondents consists of a small punch board and two watches. Each of the punch boards contains 160 punches and a prize punch, which is not punched until all of the punches are sold. Accompanying said punch board is a list on which is to be written the name of the purchaser of each punch opposite the number which is revealed when he purchases a punch. The purchaser of the board pays the price for his punch as shown by the punch received. When all of the punches have been sold, the prize punch is punched and the winner is disclosed. The person who has purchased a punch corresponding to the number disclosed by the prize punch is awarded a watch. The punch board has on its face the following legend or instructions:

WIN A GUARANTEED
10K Gold R. G. P.
FULLY JEWELLED WATCH
(FREE) Nos. 1 to 25 (FREE)
Star Prize—Do Not Punch
Until Entire Board is Sold
Nos. 26 to 50 pay what you draw
Nos. over 50 pay only 50¢
Nos. 33 and 44 each receive
Matched Compact & Cigarette Set

and the list on which the names of purchasers are written bears the legend as follows:

NUMBER UNDER STAR PRIZE RECEIVES
GUARANTEED 10K GOLD R. G. P.
FULLY JEWELLED WATCH
Nos. 33 and 44 Each Receive
MATCHED COMPACT AND CIGARETTE CASE SET

Respondents sell their punch board deals as above described to persons located in the various States of the United States, and these customers of respondents make sale of respondents' merchandise by means of said punch boards in accordance with the above described legend or instructions, and said watches and merchandise are awarded

to the customers or purchasers from said punch board in accordance with the above described legend. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for the chance to receive said merchandise is thus determined wholly by lot or chance. The watches and other merchandise have a retail value greater than the price paid for any of the chances.

Respondents sell and distribute various other punch board and push card and merchandise deals, all of which involve the sale of said merchandise by means of said other punch board and push card deals and vary only in detail. All of said merchandise plans embody the distribution of merchandise by game of chance, gift enterprise, or lottery schemes.

PAR. 3. Retail dealers, operators and others who purchase respondents' push card and punch board and watch assortments or deals, directly or indirectly, use the said push cards or punch boards for distribution of the watches to the purchasing public in accordance with the sales plan above described. Respondents thus supply to and place in the hands of other the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans and methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 10, 1952, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 31, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence, and proposed findings and conclusions submitted by counsel (oral argument not having been requested, the matter having already been argued at length upon a motion to dismiss the complaint made by respondents' counsel earlier in the proceeding), and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Samuel Cohen and Irwin H. Fisher, are individuals and partners trading under the name Monroe Sales Company, with their office and principal place of business located at 32 South Street, Baltimore, Maryland. Respondents are now, and since March 1949 have been engaged in the sale and distribution of watches, novelties and other articles of merchandise, and cause and have caused their products, when sold, to be transported from their place of business in the State of Maryland to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in

their merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. While respondents sell some of their merchandise at wholesale, by far the greater portion is sold direct to members of the public. These customers are obtained in various ways—through solicitation by respondents' traveling salesmen, by advertising circulars sent by respondents through the mail, and through the recommendation of persons who are themselves customers of respondents.

Much of the merchandise so sold by respondents is in the form of assortments or combinations of merchandise and certain other articles, and it is these assortments which form the subject matter of the present proceeding. One of these assortments, which is typical of the sales method used by respondents, includes two watches, two cigarette case and compact sets, and a "sales outfit" consisting of a "block" and "chart." The block is in fact a small punchboard; the chart is merely a card upon which are to be written the names of persons playing or punching the board. The purchase price of the entire assortment is \$64.50, which includes 75¢ for the punchboard and card. The assortment is shipped only upon the written order of the purchaser, and usually upon credit terms, prepayment of the purchase price not being required.

The punchboard contains 160 small holes in each of which is a number, the number being concealed from view until the punch has been made and the number separated from the board. There is also a "star" or master punch which likewise contains a concealed number. On the face of the board appears the following:

WIN A GUARANTEED
10K Gold R. G. P.
FULLY JEWELLED WATCH
(FREE) Nos. 1 to 25 (FREE)
Star Prize—Do Not Punch
Until Entire Board is Sold
Nos. 26 to 50 pay what you draw
Nos. over 50 pay only 50¢
Nos. 33 and 44 each receive
Matched Compact & Cigarette Set

At the top of the chart or card appears the following:

NUMBER UNDER STAR PRIZE RECEIVES
GUARANTEED 10K GOLD R. G. P.
FULLY JEWELLED WATCH
Nos. 33 and 44 Each Receive
MATCHED COMPACT AND CIGARETTE CASE SET

Persons purchasing the assortment from respondents sell the 160 punches on the board to other members of the public in accordance

Conclusion

48 F. T. C.

with the foregoing instructions, noting on the card the name of each person punching the board, together with the number punched by such person. After all 160 punches have been sold, the star or master punch is separated from the board and the person who has punched the number on the board corresponding to the number of the star punch receives the main prize, which is one of the watches. The cigarette case and compact sets are also awarded in accordance with the instructions on the board and card. Persons not punching one of the lucky numbers receive nothing for the respective amounts paid by them other than the privilege of punching or playing the board. The sale of the 160 punches nets the operator of the board \$64.50, which he remits to respondents to cover the purchase price of the assortment. The second watch is retained by the operator as his own prize or profit from the transaction. Both of the watches are of good quality, each having a retail value greatly in excess of the amount paid for any of the punches on the board.

PAR. 3. It is clear from the foregoing that the sale or distribution of the merchandise in question to the ultimate consumer or general public involves the operation of a lottery or game of chance, and that respondents supply to and place in the hands of others lottery devices for use in the sale or distribution of respondents' merchandise. In addition to the punchboard described above, respondents have also supplied to purchasers of their merchandise push cards and other punchboards, all of which devices involved the operation of games of chance in the resale of such merchandise.

CONCLUSIONS

In their defense respondents urge that there is no relation of principal and agent existing between themselves and the persons who resell their merchandise, the only relation being that of seller and purchaser; that respondents require only that the purchaser pay them the stipulated price of the merchandise, the purchaser being under no compulsion or instruction to use the punchboard at all; that the purchaser is entirely free to keep all of the merchandise for himself, sell it in regular course without the use of the punchboard, or give it away, provided he remits to respondents the agreed purchase price of the merchandise; that the punchboard is not supplied or furnished by respondents free but is sold to the purchaser as an item of merchandise just as are the other articles in the assortment; that a purchaser is not required to buy any merchandise in assortments but is free to purchase any or all of the articles separately and without the punchboard, and may also purchase the punchboard separately and without any merchandise at

956

Order

all if he wishes to do so. Respondents further point out that they do not sell these assortments to children but only to mature and responsible persons whom respondents regard as acceptable credit risks.

The weakness in respondents' position is that it overlooks the fact that the entire merchandising plan contemplates the use of the punchboard by the purchaser of the assortment, and the resale or distribution of the merchandise to the public by means of a lottery or game of chance. Actual instances are disclosed by the testimony in which the punchboard was so used by purchasers, but even if there were no testimony at all on this point the conclusion would be inescapable from the nature of the transaction and the supplying by respondents of the lottery device. The punchboard could serve no other purpose. The fact that the purchase price of the assortment includes a specified amount for the punchboard and card is immaterial. While the fact that respondents do not sell the assortments to minors is a mitigating circumstance, it does not affect the legal principle involved.

It is further and earnestly urged by respondents that this entire proceeding is fatally defective for the reason that the Commission's complaint does not charge, nor does the evidence establish, that respondents' merchandising plan is an unfair method of competition or that there is any injury to respondents' competitors as a result of the use of the plan. As the examiner understands the decisions of the courts since the adoption of the Wheeler-Lea amendment to the Federal Trade Commission Act, it is no longer necessary to allege or prove in a proceeding of this kind either the existence of competition or any injury to competition. The present complaint proceeds upon the theory that the practice of a seller of merchandise of placing in the hands of others lottery devices for use in the sale or distribution of such merchandise to the public is an unfair act or practice, unfair to the public in that it promotes and encourages gambling and is in contravention of public policy. This theory appears to find ample support in the authorities. It is therefore concluded that the absence of the element of competition constitutes no bar to the present proceeding.

It is further concluded that the acts and practices of respondents as hereinabove set out are all to the prejudice of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Samuel Cohen and Irwin H. Fisher, individually and as partners trading under the name Monroe Sales Company or under any other name, and respondents' agents,

Order

48 F. T. C.

representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of watches, novelties or any other merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punchboards, push cards, or other lottery devices, either with assortments of merchandise or separately, which punchboards, push cards, or other lottery devices are to be used or may be used in the sale or distribution of respondents' merchandise to the public.
2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 10, 1952].

Complaint

IN THE MATTER OF

WILL-WELD MANUFACTURING COMPANY ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5922. Complaint, Sept. 11, 1951—Decision, Mar. 13, 1952

Where a corporation and its three officers, engaged in the interstate sale and distribution of unassembled electric home welding machines; in advertising the same through magazines and circulars—

Represented that their said machine, made by assembling the various parts, would operate consistently and safely on the electric circuit ordinarily found in a home, on a 30 ampere fuse, use of which they recommended;

The facts being that their said machine could not be used safely in a home: the electric circuit in most homes is wired with No. 14 American wire gauge wire, which necessitates use of 15 ampere fuses; and use of their said machine with a 30 ampere fuse, which requires a No. 10 wire, on a No. 14 wire would cause overloading until the circuit breaker or fuse opened and result in overheating and a dangerous fire hazard, danger of which they failed to reveal or caution the public against;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their assembled machine would operate safely on the ordinary home lighting circuit, and thereby induce purchase of said parts and the assembling and use of said machines in homes:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. John W. Russell for the Commission.

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 Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman, and L. B. Bush, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Will-Weld Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, having its office and prin-

Complaint

48 F. T. C.

principal place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. Said corporation trades and does business under the name of Atomic Arc Welder Company.

Respondents W. O. Schneiderwind, W. J. Dillman and L. B. Bush are President, Vice-President and Secretary-Treasurer, respectively, of corporate respondent and also have their principal office and place of business at 1038 South 19th Street in the city of Omaha, in the State of Nebraska. The individual respondents formulate, direct and control the acts and practices of corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of unassembled electric home welding machines.

PAR. 3. Respondents cause, and have caused, the unassembled parts of said welding machines to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said unassembled machines in commerce among and between the various States of the United States. Their volume of trade in said commerce is and has been substantial.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product in commerce, respondents have made certain statements and representations concerning the welding machines assembled from the parts sold by them by means of advertisements inserted in magazines and in circulars sent to members of the purchasing public. Among and typical of the statements and representations contained in said advertisements and circulars are the following:

Profit or pleasure in your home or work shop

Gives 100% penetration. Welds are stronger than original metal. Operates on 110 or 220 A. C.

Your Atomic Arc Welder will operate on either 110 or 220 alternating current, 50 or 60 cycle. On 110 or 220 volts you can use $\frac{1}{8}$ " electrodes and weld $\frac{1}{4}$ " plate in one pass.

The Atomic Arc Welder gives the maximum amount of heat practical on the ordinary 110 volt lighting circuit.

The Atomic Arc Welder is a transformer type Arc Welder. Not a Resistance type welder. Safe, rugged, compact and portable.

IN YOUR HOME OR WORKSHOP

The ATOMIC ARC WELDER

is . . . Safe . . . can be used consistently on 30 ampere fuse.

PAR. 5. Through the use of the aforesaid statements and representations and others of the same import not specifically set out herein,

respondents represented that the welding machine assembled by the use of the various parts sold by them will operate safely in the home on the electrical circuit ordinarily found in the home.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. Most homes operate on a 110 volt lighting circuit, are wired with No. 14 gauge wire and use 15 ampere fuse plugs. Respondents recommend the use of 30 ampere fuse plugs. The operation of their welding machine upon such a circuit and using 30 ampere fuse plugs is not safe as a definite fire hazard will result.

PAR. 7. At no place in respondents' advertising or elsewhere is the fact revealed that a dangerous fire hazard will result from operating their said machine on the ordinary home lighting circuit fused as recommended. Furthermore, respondents do not inform purchasers of the proper wiring and fusing necessary to safely operate said machine in the home. By failing to reveal these facts respondents impliedly represent, contrary to the facts, that the use of said machine in the home is safe under all conditions of ordinary use.

PAR. 8. The use by the respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true and that their assembled machine will operate safely on the ordinary home lighting circuit and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said unassembled parts and to assemble and use said welding machines in their homes.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 13, 1952, the initial decision in the instant matter of Hearing Examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 11, 1951, issued and

Findings

48 F. T. C.

subsequently served its complaint in this proceeding upon respondents Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman and L. B. Bush, individually and as officers of said corporation, charging them and each of them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The corporate respondent answered, no answer being filed by any of the individual respondents, and, after reasonable notice, hearing was held, at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, which said evidence was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, all intervening procedure before the examiner being waived; 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, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Will-Weld Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, having its office and principal place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. Said corporation trades and does business under the name of Atomic Arc Welder Company.

Respondents W. O. Schneiderwind, W. J. Dillman and L. B. Bush are President, Vice-President and Secretary-Treasurer, respectively, of the corporate respondent and also have their principal office and place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. The individual respondents formulate, direct and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of unassembled electric home welding machines.

PAR. 3. Respondents cause, and have caused, the unassembled parts of said welding machines to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said unassembled machines in commerce among and between the various States of the

965

Order

United States. Their volume of trade in said commerce is, and has been, substantial.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product in commerce, respondents, by means of advertisements inserted in magazines and circulars sent to members of the purchasing public, represented that their electric home welding machine, made by the assembling of the various parts sold by them for a complete welding machine, would operate consistently and safely on the electric circuit ordinarily found in a home, on a 30 ampere fuse, the use of which they recommend.

PAR. 5. The electric circuit found in most homes is wired with No. 14 American wire gauge wire which provides 115 to 120 volts and necessitates the use of 15 ampere fuse plugs.

PAR. 6. A 30 ampere fuse requires a No. 10 American wire gauge wire. The use of respondents' welding machine with a 30 ampere fuse on a No. 14 American wire gauge wire (the numbering system used on wiring runs in reverse), will cause an overloading of the circuit until the circuit breaker or fuse opens, resulting in overheating and producing a dangerous fire hazard. Respondents do not reveal to or caution the public against this danger but, on the contrary, represent to the public that their welding machine can be safely used in homes.

PAR. 7. The use by the respondents of the statements and representations referred to in Paragraph Four has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that their assembled machine will operate safely on the ordinary home lighting circuit and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said unassembled parts and to assemble and use said welding machines in their homes.

CONCLUSION

The acts and practices of respondents, as set forth in the findings, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman and L. B. Bush, individually and as officers of the corporate re-

