

ity of chinchilla breeding stock; or that score sheets recording the grading of animals under that system are generally accepted by the chinchilla industry as proof of the quality of the chinchillas purchased from respondents.

11. Sales by respondents of their chinchilla breeding stock are limited to a few persons in each locality.

12. Purchasers of respondents' chinchilla breeding stock are given training in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented training or advice is actually furnished.

13. Purchasers of respondents' chinchilla breeding stock will be furnished with inspection services by respondents twice each year or as often as such services may be required by the purchaser: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented inspection services are actually furnished.

14. Misrepresenting in any manner the assistance, training, services or advice supplied by respondents to purchasers of their chinchilla breeding stock.

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

IN THE MATTER OF

JAMES R. BOARMAN TRADING AS R & B SEWING MACHINE
& VACUUM CLEANER CO., ETC.

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

Docket 8706. Complaint, Aug. 25, 1966—Decision, Dec. 7, 1966

Order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease using deceptive savings and guarantee claims, using bait and switch sales tactics, and disparaging competitors' products.

Complaint

70 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 James R. Boarman, an individual, trading as R & B Sewing Machine & Vacuum Cleaner Co. and R & B Sewing Machine Co., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent James R. Boarman is an individual who trades as R & B Sewing Machine & Vacuum Cleaner Co. and R & B Sewing Machine Co., with his office and principal place of business located at 4326½ Georgia Avenue, NW., Washington, D.C. 20011.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners at retail to the public.

PAR. 3. In the course and conduct of his business, respondent maintains his principal place of business within the geographical confines of the District of Columbia and now causes and for some time last past has caused, his said products, when sold, to be shipped from his said place of business in the District of Columbia to purchasers thereof located within the District of Columbia and in various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent now makes, and has made, certain statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price and the guarantee of his products. Among and typical, but not all inclusive of such statements and representations are the following:

SEWING MACHINES—Singer Console left in lay away; zig-zag attach.; bal. \$26. Portables \$19.95. Terms. Will deliver. RA 3-6181. Dealer
VACUUMS—Recond. Electrolux GE. Hoovers, \$9.95 guar., will del., RA 3-6181.

PAR. 5. By and through the use of the aforesaid statements and

representations, and others of similar import and meaning but not specifically set out herein, and by the oral representations of respondent and his salesman, respondent represents, and has represented, directly or by implication:

1. Through use of the statement "left in lay-away-bal. \$26" and statements of similar import, that sewing machines partially paid for by previous purchaser have been left in lay-away and are being offered for the unpaid balance of the purchase price, affording savings in the amount paid on the merchandise by the previous purchaser.

2. That respondent is making a bona fide offer to sell the advertised sewing machines and vacuum cleaners.

3. That the advertised machines are guaranteed without limitation or condition.

PAR. 6. In truth and in fact:

1. Said sewing machines had neither been partially paid for by previous purchasers left in lay-away nor were they being offered for the unpaid balance of the purchase price, and the represented savings were not afforded to purchasers.

2. Respondent's offers were not bona fide offers to sell the advertised machines as represented and on the terms and conditions stated but were made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines and vacuum cleaners. After response to said advertisements respondent called upon such interested persons at their homes but made no effort to sell the advertised machines. Instead, he exhibited what he represented to be the advertised machine but which because of its poor appearance and condition was on sight rejected by the prospective purchaser. Concurrently respondent presented a new or reconditioned high priced machine whose superior appearance and condition by comparison disparaged and demeaned the advertised product; besides he used other tactics to discourage the purchase of the advertised machine, and attempted to sell and often did sell, the higher priced machine.

3. Said advertised machines are not guaranteed without limitation or condition. Such guarantee as may be furnished in connection therewith is subject to numerous terms, conditions, and limitations not disclosed in said advertisements.

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 his business, and at all

times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondent.

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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

No appearance entered for respondent.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

OCTOBER 21, 1966

The complaint in this case, charging respondent with misrepresentation in the sale of sewing machines and vacuum cleaners in violation of Section 5 of the Federal Trade Commission Act, was issued on August 25, 1966, and was duly served upon respondent by registered mail on September 8, 1966. Under Rule 3.5(a) of the Commission's Rules of Practice for Adjudicative Proceedings, respondent was allowed thirty days thereafter within which to file answer, or until October 10, 1966 (see Rule 4.3(a)). Respondent failed to answer or otherwise respond within the specified time.

The Notice attached to the complaint set the hearing for 10 o'clock a.m. on October 11, 1966, in the Federal Trade Commission Offices, 1101 Building, 11th Street at Pennsylvania Avenue, NW., Washington, D.C. However, on motion of counsel supporting the complaint, the hearing examiner cancelled the hearing (subject to being rescheduled on ten days' notice) and substituted therefor a prehearing conference at the same time and place. Pursuant to notice, the prehearing conference was duly convened as

scheduled in Room 7314 of the 1101 Building, but respondent failed to appear, either in person, by counsel, or by other representative (Tr. 2-6). Accordingly, counsel supporting the complaint moved that respondent be found in default under the provisions of Rule 3.5(c) (Tr. 3-4). That Rule reads as follows:

Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint and to authorize the hearing examiner, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

Having failed to answer, to appear, or to otherwise respond, respondent is in default and is deemed to have waived his right to appear and contest the allegations of the complaint. Accordingly, this proceeding is now before the examiner for final consideration on the basis of the complaint and the proposed order attached thereto.

The examiner finds that the complaint states a cause of action; that this proceeding is in the public interest; and that the Federal Trade Commission has jurisdiction over respondent and the subject matter of the complaint. Therefore, in accordance with Rule 3.5(c), the examiner further finds the facts to be as alleged in the complaint and issues this initial decision containing such findings, together with appropriate conclusions and the order to cease and desist that the Commission determined should issue on the basis of such findings.

FINDINGS OF FACT

1. Respondent James R. Boarman is an individual who trades as R & B Sewing Machine & Vacuum Cleaner Co. and R & B Sewing Machine Co., with his office and principal place of business located at 4326½ Georgia Avenue, NW., Washington, D.C. 20011.

2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners at retail to the public.

3. In the course and conduct of his business, respondent maintains his principal place of business within the geographical confines of the District of Columbia and now causes and for some time last past has caused, his said products, when sold, to be shipped from his said place of business in the District of Columbia to purchasers thereof located within the District of Columbia and in various States of the United States, and maintains, and at

all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent now makes, and has made, certain statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price and the guarantee of his products. Among and typical, but not all inclusive of such statements and representations are the following:

SEWING MACHINES—Singer Console left in lay away; zig-zag attach.; bal. \$26. Portables \$19.95. Terms. Will deliver. RA 3-6181. Dealer

VACUUMS—Recond. Electrolux GE. Hoovers, \$9.95 guar., will del., RA 3-6181.

5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and by the oral representations of respondent and his salesman, respondent represents, and has represented, directly or by implication:

1. Through use of the statement "left in lay-away—bal. \$26" and statements of similar import, that sewing machines partially paid for by previous purchaser have been left in lay-away and are being offered for the unpaid balance of the purchase price, affording savings in the amount paid on the merchandise by the previous purchaser.

2. That respondent is making a bona fide offer to sell the advertised sewing machines and vacuum cleaners.

3. That the advertised machines are guaranteed without limitation or condition.

6. In truth and in fact:

1. Said sewing machines had neither been partially paid for by previous purchasers left in lay-away nor were they being offered for the unpaid balance of the purchase price, and the represented savings were not afforded to purchasers.

2. Respondent's offers were not bona fide offers to sell the advertised machines as represented and on the terms and conditions stated but were made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines and vacuum cleaners. After response to said advertisements respondent called upon such interested persons at their homes but made no effort to sell the advertised machines. Instead, he exhibited what he represented to be the advertised machine but which because of its poor

appearance and condition was on sight rejected by the prospective purchaser. Concurrently respondent presented a new or reconditioned high priced machine whose superior appearance and condition by comparison disparaged and demeaned the advertised product; besides he used other tactics to discourage the purchase of the advertised machine, and attempted to sell and often did sell, the higher priced machine.

3. Said advertised machines are not guaranteed without limitation or condition. Such guarantee as may be furnished in connection therewith is subject to numerous terms, conditions, and limitations not disclosed in said advertisements.

Therefore, the statements and representations referred to in Paragraph 4 and 5 hereof were, and are, false, misleading and deceptive.

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

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

CONCLUSIONS

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

ORDER

It is ordered, That respondent James R. Boarman, an individual doing business as R & B Sewing Machine & Vacuum Cleaner Co. and R & B Sewing Machine Co., or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sew-

Final Order

70 F.T.C.

ing machines, vacuum cleaners or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that merchandise has been left in lay away or that it is being offered for the balance of the purchase price which was unpaid by a previous purchaser; or misrepresenting in any manner the status, kind, quality or price of the merchandise being offered.

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

3. Disparaging, in any manner, or discouraging the purchase of any product advertised.

4. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services; or using any advertising, sales plan or procedures involving the use of false, deceptive or misleading statements or representations to obtain leads or prospects for the sale of other merchandise.

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

FINAL ORDER

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

It is ordered, That the initial decision of the hearing examiner shall, on the 7th day of December, 1966, become the decision of the Commission.

It is further ordered, That James R. Boarman, trading as R & B Sewing Machine & Vacuum Cleaner Co. and R & B Sewing Machine Co., shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, setting forth in detail the manner and form of his compliance with the order to cease and desist.