

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff) CIVIL ACTION NO. 154-108
v.) Filed: July 2, 1964
THE SINGER COMPANY,)
Defendant)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 22, 1959; defendant The Singer Company, having appeared and filed its answer to the complaint; the cause having come on for trial and evidence having been taken; this Court having dismissed the complaint; the Supreme Court having reversed and remanded the case for entry of an appropriate decree in accordance with its opinion; hearings having been held; rulings having been made and this Court having filed an opinion on Judgment and Remedies directing the submission of a decree in accordance therewith;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED:

I

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation or other legal entity;
- (B) "Defendant" means The Singer Company, a New Jersey corporation with its principal place of business in New York, New York;

(C) "Machine-carried multiple cam zigzag sewing machine" means a household sewing machine which, in addition to straight stitches, produces, without any artistry on the part of the operator, various ornamental and functional zigzag stitch patterns, the pre-selection of which is made by the user, through a device such as a dial, handle or knob located on the exterior of the machine which effects a relative shifting of cam tracking means and a group of cams carried by the machine;

(D) "Subject patents" means:

- (1) Gegauf Patent I, or Patent No. 2,832,302 issued April 29, 1958;
- (2) Harris Reissue Patent, or Reissue Patent No. 24,370 issued October 8, 1957, based upon the original Harris Patent No. 2,693,778 issued November 9, 1954;
- (3) Johnson Patent, or Patent No. 2,862,468 issued December 2, 1958;
- (4) Perla Patent, or Patent No. 2,810,360 issued October 22, 1957;
- (5) Gegauf Patent II, or Patent No. 2,877,726 issued March 17, 1959.

II

The provisions of this Final Judgment applicable to the defendant shall also be applicable to its subsidiaries, officers, directors, agents, employees, successors and assigns, and to those persons acting in concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

III

Defendant has combined and conspired to restrain interstate and foreign trade and commerce in the importation, sale and distribution of machine-carried multiple cam zigzag sewing machines, manufactured

in Japan, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The five subject patents were embraced in said conspiracy and defendant has affirmatively asserted three of these subject patents in furtherance of such conspiracy, namely, Gegauf United States Patent No. 2,832,302, Harris United States Reissue Patent No. 24,370 and Johnson United States Patent No. 2,862,468.

IV

Defendant is enjoined and restrained from:

(A) Entering into or adhering to any contract, combination or conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to use any patent rights to prevent or restrict the importation into the United States of any machine-carried multiple cam zigzag sewing machines, or to prevent their use or sale within the United States.

(B) Acquiring, directly or indirectly, within five (5) years from the date of entry of this Final Judgment, any United States patent claiming a machine-carried multiple cam zigzag sewing machine mechanism, from any person engaged in the manufacture, distribution or sale of machine carried multiple cam zigzag sewing machines, or acquiring from any such person, within that five (5) year period, any exclusive license under any such patent.

(C) From instituting or threatening to institute, or maintaining or continuing any action, suit or proceedings for acts of infringements of any of the subject patents with respect to machine-carried multiple cam zigzag sewing machines which have arrived at a port of entry of the United States prior to the date of this Final Judgment.

V

(A) 1. Defendant shall grant to any applicant making written request a nonexclusive license to make, have made, use and vend under any, some or all of the subject patents. A reasonable nondiscriminatory royalty may be charged, and reasonable provisions

made for periodic inspection of the books and records of the licensee by an independent auditor or other person acceptable to the licensee, who shall report to the licensor only the amount due and payable.

2. Reasonable provisions may be made for cancellation of the license upon failure of the licensee to pay the royalties, or to permit the inspection of the books and records provided for above. The license may be granted as a non-transferable and indivisible one.

3. Each such license shall provide that the licensee may cancel the license at any time after one year from the initial date by giving thirty days notice in writing.

(B) Whenever defendant shall receive a written request for a license of a subject patent or patents, it shall advise the applicant, in writing, of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date the request for a license was received by the defendant, the applicant may forthwith apply to this Court for the determination, upon a hearing and proof, of a reasonable royalty. Upon receipt of notice of the application to the Court, the defendant shall promptly give notice thereof to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The reasonable royalty rates, if any, determined by this Court shall apply from the date of his application for a license to the applicant and to all other licensees pursuant to this judgment under the same patent or patents. Pending the completion of negotiations, or of any such proceeding, the applicant shall have the right to make,

use or vend under the patent or patents to which its application for a license pertains, without the payment at the time of the application of royalty or other compensation, but the applicant or defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, the defendant shall then issue, and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of the application for a license. If the applicant fails to accept the license or fails to pay the interim royalty, such action shall be cause for the dismissal of his application, and his rights under this paragraph shall terminate without relieving him of liability for payment of a reasonable royalty during such time as said patent or patents were used.

The Court may order the inclusion in any license directed to be granted by it of all reasonable and equitable provisions and terms.

(C) Defendant shall not make any disposition of subject patents or rights thereunder, which deprives it of the power or authority to issue the licenses required by this judgment, unless the defendant requires, as a condition of the sale, assignment or grant, that the purchaser, assignee or licensee shall file with this Court, prior to the consummation of said transaction, a written undertaking to be bound by the provisions of this Article of this judgment with respect to the patent or rights so acquired.

VI

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon request of the Attorney General or the Assistant Attorney General

in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of defendant as relate to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of defendant, who may have counsel present, regarding any such matters.

No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings in which the Department of Justice is a party, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions contained herein and for the enforcement of compliance therewith and the punishment of the violation thereof.

VIII

COSTS

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

Dated: July 1, 1964

/s/ Sylvester J. Ryan
United States District Judge