

Syllabus

IN THE MATTER OF

WATERBURY CLOCK COMPANY, INGERSOLL WATCH
COMPANY, INC., INGERSOLL WATCH COMPANY,
GEORGE H. EBERHARD COMPANY

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

Docket 1460. Complaint, May 10, 1927—Decision, Apr. 3, 1928

Where a corporation long engaged in the manufacture of watches, and in the sale thereof under the trade name "Ingersoll Watches," through three corporations, its sole distributors for the United States; and said distributors; with the intent and effect of (1) securing agreements and understandings from wholesale and resale dealers that they would maintain the resale prices (a) specified and established by it and its distributors, individually and in cooperation with one another, and (b) widely advertised by them in newspapers and magazines, circulars and other trade literature distributed among their customers and the wholesale and retail trade generally, and (2) suppressing competition between said dealers and preventing the exercise by them of their own discretion in the sale of said watches, and not acting in good faith, but well knowing that price cutting afforded no basis for a proceeding for damages of any kind;

(a) Adopted the practice of placing on the cartons of their said watches and also on all their billheads, order blanks, and other stationery, a statement (1) giving notice that the advertisement or sale of said Ingersoll watches at prices different from those advertised by them damaged the trade-mark and good will represented by the name Ingersoll; (2) setting forth that the buyer admitted "the foregoing facts and conclusions"; (3) declaring their intention "to prevent such damage and to protect the Ingersoll trade-mark and good will by prosecuting the property rights therein to the fullest extent of the law"; and (4) offering to relieve any dealer having on hand a stock of their watches, which he desired to dispose of at other than their fixed prices, of said stock; and

(b) Sent to price cutting or alleged price cutting wholesale and retail dealers a form letter directing their attention to and emphasizing the aforesaid notice;

With the result of controlling prices and suppressing competition in the sale by dealers of said watches, constraining them to sell the same at the established prices, and preventing them from selling said watches at such lower prices as they might desire, and depriving the ultimate purchasers thereof of those advantages in price which they would obtain from the natural and unobstructed flow of commerce in said watches under conditions of free competition:

Held, That such a scheme of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Edward S. Rogers and *Mr. Arthur E. Walradt*, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, the Waterbury Clock Co., a Connecticut corporation, with principal office and place of business in Waterbury, engaged in the manufacture and sale of "Ingersoll" watches throughout the United States, respondent Ingersoll Watch Co., Inc., a New York corporation with principal office and place of business in New York City, respondent Ingersoll Watch Co., an Illinois corporation with principal office and place of business in Chicago, both subsidiaries of said Waterbury Co., and respondent George H. Eberhard Co., a California corporation with principal office in San Francisco, through which companies respondent Waterbury Co. sold its watches (said Eberhard Co. being engaged in the sale of such watches under the terms of a contract between it and the Ingersoll Watch Co.), with maintaining resale prices in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in the course and conduct of their aforesaid business, for about five years last past "have enforced, and still enforce, a merchandising system adopted by them of establishing and maintaining certain specified uniform prices at which said Ingersoll watches shall be resold by dealers handling same, and respondents enlist and secure the support and cooperation of said dealers and of respondents' officers, agents and employees in enforcing said system. In order to carry out said system, respondents, and each of them, during said time have employed and still employ the following, among other means, whereby respondents and those cooperating with them have undertaken to prevent and have prevented dealers handling said Ingersoll watches from reselling same at prices less than aforesaid resale prices established by respondents":

(a) Establishing uniform minimum prices at which wholesale dealers handling said Ingersoll watches shall resell the same to retail dealers and requiring said wholesalers to sell such watches to retailers exclusively;

(b) Establishing uniform minimum prices at which retailers shall resell said watches to the general public;

(c) Issuing price lists setting forth uniform minimum wholesale and retail prices, to dealers;

(d) Causing to be set forth upon the invoices, bills, order blanks and other business stationery and upon the individual containers of their said watches "a certain notice and warning to the effect that the sale of said watches at less than said minimum wholesale

and retail prices, respectively, constitutes a damage to the trade-mark 'Ingersoll' and to the good-will which said name 'Ingersoll' represents, together with the statement that the buyer admits such damage and that respondents will prevent such damage and protect said trade-mark and good-will through legal proceedings in the premises";

(e) Making it generally known to the trade by letters, telegrams, interviews with their agents and salesmen, and otherwise that they expect and require (1) dealers handling their said watches to maintain and enforce said minimum resale prices; and (2) wholesalers to resell said watches exclusively to retailers, and to refuse to further sell and supply such watches to price cutting retailers;

(f) Entering into agreements and understandings with wholesale and retail dealers handling such Ingersoll watches providing for the maintenance of such resale prices by said dealers;

(g) Employing their salesmen and agents and employees to visit price cutting dealers, wholesalers selling their said watches to other wholesalers, and wholesalers selling and supplying the same to price cutting retailers, and persuading and coercing price cutting dealers, by argument and intimidation to maintain their said resale prices in the future, to confine their sales, in the case of wholesalers, exclusively to retailers, and to refrain from further selling and supplying their said watches to price cutting retailers;

(h) Seeking and securing from dealers handling their said watches information concerning and evidence of price cutting by other dealers, and of the selling of their said watches by wholesalers to other wholesalers, and to price cutting retailers;

(i) Employing their salesmen and other agents and employees to ascertain, investigate and secure information concerning and evidence of, price cutting by dealers, failure of wholesalers to confine their sales to retailers exclusively, and sale of their said watches by wholesalers to price cutting retailers, together with proofs of the offenses, and to report to it in the premises;

(j) Employing a system of serial numbers and other marks which they cause to be stamped and printed upon the containers of their said watches "by means whereof respondents, their salesmen and employees may, and they do, trace said watches through the channels of trade to the general public and thus identify wholesale dealers who sell said watches to other wholesale dealers; wholesale dealers who sell said watches to retail dealers at less prices than said minimum wholesale prices; wholesale dealers selling and supplying said watches to retail dealers who fail to maintain said minimum

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retail prices and retail dealers who sell said watches to the general public at prices less than said minimum retail prices”;

(*k*) Using information secured through the means set out in paragraphs (*h*), (*i*), and (*j*), and otherwise, to induce and coerce price cutting dealers to observe and maintain their resale prices in the future, and wholesalers to confine their sales in the future exclusively to retailers, and/or to refrain from supplying said watches to price cutting retailers, “by (1) exacting promises and assurances from said dealers that they will in future maintain said prices, sell said watches exclusively to retail dealers and refrain from selling and supplying said watches to retail dealers who fail to maintain said minimum retail prices, as the case may be; (2) threatening said dealers that if they do not comply with such demands respondents will refuse to further supply them with said watches; and (3) threatening dealers who fail to maintain said resale prices, with law suits based upon the provisions of said warning and notice referred to in specification (*d*) hereof”;

(*l*) Exacting promises and assurances from dealers that they will maintain said resale prices and otherwise conform to respondents’ merchandising policies, as hereinabove set out, as a condition of opening new accounts with them or of continuing to supply them, with their said watches;

(*m*) Refusing further to supply their watches to price cutting dealers, to wholesalers selling to other wholesalers, and to wholesalers selling to price cutting retailers;

(*n*) Compiling and maintaining lists and records from the various means and sources of information hereinbefore referred to, of the names of price cutting dealers, of wholesalers selling to other wholesalers, and of wholesalers selling to price cutters, “which said lists and records respondents and their agents and servants use in and about preventing said dealers so listed and recorded from securing further supplies of said Ingersoll watches”; and

(*o*) Using other equivalent cooperative and individual means and methods for the enforcement of said system of resale prices;

As a result of said acts and practices, as alleged, respondents’ said resale prices have been and now are, generally maintained, and, further, the direct effect and result thereof “have been and are now to suppress competition in the distribution and sale of said Ingersoll watches; to constrain said dealers to sell said watches at aforesaid prices fixed by respondents and to prevent them from selling said watches at such less prices as they may desire, and to deprive the ultimate purchasers of said watches of those advantages in prices and otherwise which they would obtain from the natural and unob-

structed flow of commerce in said watches under conditions of free competition. Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondents, Waterbury Clock Co., Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed answers to said complaint, the hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Waterbury Clock Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business and factory at the city of Waterbury in said State. It is now, and for many years has been, engaged in the manufacture of watches known as, and named "Ingersoll watches", and the sale thereof throughout the United States through respondent Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., hereinafter mentioned. Respondents Ingersoll Watch Co., Inc., and Ingersoll Watch Co. are and have been since 1922, corporations, the first named organized and existing under the laws of the State of New York, with its principal place of business at the city of New York and the second named, organized and existing under the laws of the State of Illinois, with its principal place of business at the city of Chicago. Both of said corporations were organized for the sole purpose of selling the watches manufactured by respondent Waterbury Clock Co., the capital stock of each, with the exception of a few shares necessary to qualify offi-

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cers and directors, is owned by respondent Waterbury Clock Co., and the president of the latter is also president of the other two corporations. Respondent George H. Eberhard Co. is a corporation organized under the laws of the State of California, with its principal place of business at the city of San Francisco in said State.

PAR. 2. The respondents other than the Waterbury Clock Co. are and for years have been the sole distributors of Ingersoll watches in the United States, each covering the territory commercially appurtenant to its place of business and each engaged in the business of selling said watches to jobbers and retailers throughout said territory. All of said three distributors cause the said Ingersoll watches sold by them to be transported from the factory and from their respective places of business in the States of New York, Illinois, and California, into and through other States of the United States to their respective vendees at their various points of location.

PAR. 3. In the course and conduct of their business all of the respondents are in competition with other individuals, partnerships and corporations engaged in the sale and distribution of watches in interstate commerce between and among the various States of the United States.

PAR. 4. Since 1922 the said respondents have each individually and acting in cooperation one with the other, specified and established uniform resale prices at which Ingersoll watches shall be resold by jobbers or wholesalers purchasing from any of said respondents and also standard and uniform resale prices at which retailers, whether purchasing direct from respondents or from jobbers, shall sell said watches to the consumer or ultimate purchaser thereof. Said respondents have given and do give wide publicity to the prices thus specified by means of newspaper and magazine advertising, catalogues, circulars, and other trade literature, circulated from time to time among their customers and the wholesale and retail trade generally.

PAR. 5. Respondents regard it highly important that the established prices be maintained by dealers and sales are not usually made by them to dealers who do not maintain same. Various methods having the purpose of controlling resale prices have been employed by respondents. The respondent Ingersoll Watch Co., Inc., writing to a customer on this subject said:

We have spent a good deal of time and money in an effort to control prices and generally speaking we have been very successful and price cutting by jobbers is almost unknown, and there is very little by retailers. (Commission's Exhibit No. 9, p. 25.)

¹ Not published.

PAR. 6. In the year 1924 respondents adopted the practice, which has ever since been continued, of placing on the cartons or containers in which Ingersoll watches are packed, and also on all their bill heads, order blanks and other stationery, a notice reading as follows:

NOTICE

Watches not bearing the name "Ingersoll" are not "Ingersoll watches" and can not lawfully be advertised or sold as such.

The advertising or selling of Ingersoll watches at prices which are different from the current prices advertised by us damages the trade-mark and good will which the name "Ingersoll" represents.

THE BUYER ADMITS THE FOREGOING FACTS AND CONCLUSIONS

We purpose to prevent such damage and to protect the Ingersoll trade mark and good will by prosecuting the property rights therein to the fullest extent of the law.

To any dealer having on hand a stock of Ingersoll watches which for any reason he wishes to dispose of at other than our current advertised prices, we make the following offer:

To furnish in exchange without expense to him, duplicates of such watches without the name Ingersoll; or at our option, to repurchase at our then prevailing prices, all Ingersoll watches in merchantable condition in the dealer's possession. Watches so furnished in exchange may not be advertised or sold as Ingersoll watches, but otherwise may be dealt in as the buyer may choose.

INGERSOLL WATCH CO., INC.,

Subsidiary of Waterbury Clock Co.

PAR. 7. In connection with the above notice respondents use a form letter which is sent to both wholesale and retail dealers as to whom respondents have received from any source information that they are deviating from the established prices. This form letter is sent regardless of whether or not the person to whom it is addressed is a customer of respondents or procures his supplies from a jobber. The letter is in part as follows:

We call your attention specifically to the notice printed upon the cartons in which our watches are packed and also upon our order blanks and invoices (a copy of which is herewith enclosed) and we hereby repeat all the statements made therein.

PAR. 8. None of the respondents have ever brought any suit or action against any person on account of such person having advertised or sold Ingersoll watches at prices which were different from the current prices advertised by them, and well know that price-cutting does not afford any basis of suit or action for damages to trade mark or good will or damages of any character whatsoever. This fully

appears from the following language of respondents' brief filed with the Commission:

It is a matter of common knowledge that under the law as it now stands and has been interpreted by the courts, price cutting alone and uncombined with deceptive practices is no ground for legal action by the distributor of trade marked goods. The respondents have not attempted to interfere with or restrain any price cutter who goes no farther, but they have, as the record shows, brought suits with uniform success against price cutters who complicate price cutting with unfair practices and thus not only injure the respondents but deceive and mislead the general public.

PAR. 9. The notice set forth in paragraph 6 hereof is not given in good faith by the respondents with any purpose to warn dealers against any action or proceeding which respondents intend to bring on account of the deviation from the standard or established prices, but such notice is given for the purposes and with the effect of suppressing competition between dealers, both wholesale and retail; and of preventing the exercise by such dealers of their own discretion in the sale of said watches, and of securing agreements and understandings from such dealers that the standard and established prices will be maintained.

PAR. 10. The direct tendency and results of the foregoing acts and methods of respondents have been and now are to control prices and suppress competition in the sale by dealers of Ingersoll watches, to constrain said dealers to sell said watches at the prices fixed by respondents and to prevent them from selling said watches at such less prices as they may desire, and to deprive the ultimate purchasers of said watches of those advantages in prices which would obtain from the natural and unobstructed flow of commerce in said watches under conditions of free competition.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and are unfair methods of competition in commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the testimony and evidence, briefs and oral argument, and the Commission having made its findings as to the facts and its

conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents, Waterbury Clock Co., Ingersoll Watch Co., Inc., Ingersoll Watch Co., and George H. Eberhard Co., their officers, agents, and employees, do cease and desist from—

(1) Attaching to boxes, cartons, or other containers of watches, or otherwise publishing or making use of the notice set out in paragraph 6 of the findings herein, or any notice or statement which asserts, directly or in effect, that any dealer who sells any Ingersoll watch at a price less than the resale price thereof as established and advertised by respondents, then and thereby becomes liable in damages to respondents or any of them; or that such dealer admits such legal liability.

(2) Making, publishing, or otherwise using any threat, express or implied, to bring a suit or action in any court against any dealer, who sells an Ingersoll watch at less than such established and advertised resale price, for the recovery of damages on account of such deviation from such resale price.

It is further ordered, That the respondents shall, within 60 days after the service upon them of a copy 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 hereinbefore set forth.

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IN THE MATTER OF
HERB JUICE MEDICINE COMPANY

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

Docket 1469. Complaint, July 16, 1927—Decision, Apr. 10, 1928

Where a corporation engaged in the manufacture and sale of an extensively advertised proprietary medicine; in pursuance of a merchandising policy directed to the maintenance of uniform prices established by it for the resale of its said product,

- (a) Fixed the retail price thereof and made it generally known that dealers would be expected and required to maintain the same, under penalty of refusal of further sales;
- (b) Demanded and obtained agreements from dealers, especially price cutters, as a condition of future sales, that they would maintain its prices;
- (c) Declined to make shipments to jobbers selling to price cutting retailers, unless they would agree not to sell the same, and thereby cut off said price cutters' source of supply;
- (d) Requested and obtained reports from dealer customers regarding price cutting by other dealers and investigated the same and acted thereon by refusing further shipments to the price cutters unless they agreed to maintain prices in the future; and
- (e) Refused to fill orders from jobbers for shipment to price cutting retailers;

With the result that competition in the distribution and sale of said medicine was suppressed, and dealers therein were constrained to sell the same at the prices fixed by it, and were prevented from selling it at such prices as they desired, and ultimate purchasers thereof were thus deprived of the advantages which they would have obtained from the natural and unobstructed flow of commerce in said medicine under conditions of free competition:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Norville & Lyons, of Memphis, Tenn., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Tennessee corporation engaged in the manufacture, among other things, of a medicine under the name "Miller's Herb Juice", and in the sale and distribution thereof from its factory at Jackson, Tenn., to wholesale and retail dealers throughout the United States, with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.