

Complaint

15 F. T. C.

IN THE MATTER OF
DIEL WATCH CASE COMPANY, INCORPORATED ¹

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

Docket 1944. Complaint, Apr. 28, 1931—Order, June 15, 1931

Consent order requiring respondent to cease and desist from using the phrase "Rolled Gold Plate" or other words of like import in connection with the marking or advertising of watch cases dealt in by it, not containing as much as 3/1000 of an inch in thickness of gold on the outside, nor as much as 1/1000 of an inch in thickness, on the inside; as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Mr. Jacob M. Zinaman, of New York City, for respondent.

COMPLAINT

Acting in the public interest, 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 charges that Diel Watch Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Diel Watch Case Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office, factory, and place of business in the city of New York, in said State. It is now, and for more than one year last past has been engaged in the manufacture of watch cases and the assembling of watches, and in the sale and distribution of said products to jewelry jobbers located in various cities throughout the several States of the United States; causing said products, when so sold, to be shipped or transported in interstate commerce, from its said factory in the State of New York to the purchasers thereof located in States other than the State of New York. Such jobbers sell said watch cases and watches to retailers who, in turn, sell the same to ultimate purchasers thereof. In the

¹ By order made as of January 7, 1932, the cease and desist order herein reported, was rescinded and the complaint dismissed. See 16 F. T. C.

course and conduct of its said business, respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of watch cases and watches in interstate commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Said respondent in the course and conduct of its said business, as described in paragraph 1 hereof, has, for more than one year last past, stamped, branded, and labeled, and now stamps, brands, and labels its said watch cases with the term and designation, Rolled Gold Plate; and said watch cases and watches are resold to the public by retailers stamped, branded, or labeled with said term and designation. Respondent in soliciting the sale of and selling its said products has caused and now causes advertisements to be inserted in trade magazines and other publications having interstate circulation, and has also distributed circulars, pamphlets, catalogues, and other printed matter among the jewelry trade and the purchasing public located in various States of the United States, in which said advertisements and advertising matter it has used and now uses the said phrase, term or designation, "Rolled Gold Plate", in connection with, and as descriptive of, its said watch cases and watches sold and distributed by the said respondent in interstate commerce, as aforesaid.

PAR. 3. The said phrase or term, "Rolled Gold Plate", is a well established and standard term, when used in connection with the advertising, sale, and distribution of watch cases and watches, and is understood by the jewelry trade to signify and designate a watch case, or a watch with a case, manufactured so as to contain not less than three one-thousandths of an inch in thickness of gold on the outside of said watch case, and not less than one one-thousandths of an inch in thickness of gold on the inside of said watch case; in truth and in fact said watch cases so stamped, branded, labeled, represented, and described, were and are manufactured by respondent so as to contain less than three one-thousandths of an inch in thickness of gold on the outside of said watch cases and less than one one-thousandths of an inch in thickness of gold on the inside of said watch cases.

PAR. 4. The use by said respondent of the said standard term, "Rolled Gold Plate", in stamping, branding, labeling, and advertising said watch cases and watches, as set forth in paragraph 2 hereof, had, and now has, the capacity and tendency to mislead and deceive the jewelry trade into the erroneous belief that such watch cases and cases of watches so offered for sale and sold by said respondent contain greater thickness of gold on the inside and outside thereof than they do in fact contain, and to enable and cause retailers

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to sell and to cause ultimate purchasers to buy such watches and watch cases in such belief; and to divert trade to said respondent from competitors who manufacture, sell and distribute in interstate commerce watch cases and watches which are truthfully stamped, branded, or labeled, advertised, sold, or offered for sale.

PAR. 5. The above alleged acts and practices of the said respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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 on the 28th day of April, 1931, issued its complaint against Diel Watch Case Co., Inc., respondent herein, and caused the same to be served upon respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On May 26, 1931, respondent filed herein a written answer to said complaint in the following language:

Comes now Diel Watch Case Co., Inc., respondent, and in answer to the complaint herein states:

1. That respondent refrains from contesting this proceeding:

2. That respondent consents that the Federal Trade Commission may make, enter, and serve upon it an order to cease and desist from the violation of the law alleged in the complaint.

and the Commission having considered and accepted the terms of said answer and being fully advised in the premises:

It is ordered, That respondent, Diel Watch Case Co., Inc., its agents, employees, or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in paragraph 1 hereof—

PARAGRAPH 1. From selling, offering for sale, or distributing watch cases or cases of watches in interstate commerce which are stamped, branded, or labeled with the phrase Rolled Gold Plate or other words of like import and from using the term Rolled Gold Plate in advertising watch cases or cases of watches in magazines, trade journals,

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newspapers, in circulars, pamphlets, catalogues, and other printed matter, or otherwise, or other words or phrases of like import, unless such watch cases or cases of watches contain not less than three one-thousandths of an inch in thickness of gold on the outside thereof and not less than one one-thousandth of an inch in thickness of gold on the inside thereof.

PAR. 2. *It is further ordered*, That respondent, within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

ISIDOR WETCHLER AND SOLOMON WETCHLER, TRADING UNDER THE FIRM NAME AND STYLE L. WETCHLER & SONS—OLD GOLD COMBINATION WHITE LEAD & COLOR CORPORATION, AND ISIDOR AND SOLOMON WETCHLER AS OFFICERS THEREOF—CAMEL LEAD COLOR & CHEMICAL PRODUCTS MANUFACTURING CORPORATION, AND ISIDOR WETCHLER AND SOLOMON WETCHLER AS OFFICERS THEREOF

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

Docket 1829. Complaint, May 10, 1930—Decision, June 17, 1931

Where partners dealing in paint and painters' supplies; in engaging upon the manufacture of such products through two companies, which (1) were incorporated by them as Old Gold Combination White Lead & Color Corporation and Camel Lead Color & Chemical Products Manufacturing Corporation, respectively, (2) were caused by them to register, respectively, as trade-marks the words "Old Gold," and the word "Camel," and conspicuously, the words "Lead" and "Color," and, inconspicuously, the words "& Chemical Products Manufacturing Corporation," and (3) were owned and operated by them without disclosing that said companies were merely their corporate instrumentalities,

- (a) Employed aforesaid corporate names or portions thereof as trade-marks in advertising, designating, and describing paints and painters' materials which they caused to be made, offered, and sold by said corporations as products of said Camel Lead Color, etc., Corporation, and upon the labels and containers thereof, so as to feature through position, manner, color, and size the words "Old Gold" and "White Lead," with the word "combination" in smaller letters, notwithstanding the fact that product so described contained no more than 1 per cent of lead mixed with approximately 89 per cent of other pigment; and
- (b) Employed the same arrangement of words as aforesaid in offering and selling a product in containers bearing the corporate name Old Gold Combination White Lead & Color Corporation and featuring the words "Zinc Lead," so placed in relation to said corporate name as to signify a combination consisting of white lead and zinc without other ingredients, and captioned the circular included with the product Old Gold Combination White Lead, conspicuously displaying the first two and last two words, notwithstanding the fact that said product contained no more than a negligible amount of lead and an unsubstantial amount of zinc;

With capacity and tendency to mislead and deceive the purchasing public into believing that the products so offered and sold consisted of white lead, or of a predominant white lead, or zinc and lead, combination, as the case might be, and with effect of furnishing wholesale and retail dealers with the means enabling them to mislead and deceive their respective customers into the erroneous belief that former product trade-marked Old Gold Combination White Lead & Color Corporation was composed as above set forth, and