

Complaint

IN THE MATTER OF
KNICKERBOCKER WATCH 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 1960. Complaint, June 17, 1931—Decision, Sept. 28, 1931

Where a corporation engaged in the purchase of watchcases and watch movements in the United States and in Europe, and in the sale thereof to jewelry wholesalers and jobbers in various States for resale to retailers and ultimate purchasers, sold watchcases labeled "Goldcraft", notwithstanding the fact that said products were neither made of gold nor gold plated; with the tendency and capacity to deceive ultimate purchasers as to the composition of said watchcases and to divert trade to it from competitors dealing in such articles truthfully branded or labeled, and otherwise injure such competitors, and with the result of placing in the hands of retail dealers therein the means of committing a fraud upon aforesaid purchasers:

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

Mr. E. J. Hornibrook for the Commission.

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 New York corporation engaged for more than one year last past in buying in the United States and in Europe watchcases and watch movements, and in selling the same to jewelry wholesalers and jobbers located in various States throughout the several States, and with principal office and place of business in New York City, with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth has for more than one year last past caused to be stamped, branded, and labeled watchcases, neither made of gold, nor gold plated, with the term and designation "Warwick Watch Co.—Goldcraft"; and said watchcases are and have been for more than one year last past resold to the public by said retailers, stamped, branded, or labeled with said term and designation.

The term or designation "Goldcraft" so stamped, branded, or labeled on said watchcases, as alleged, "has the tendency and capacity to deceive ultimate purchasers of said watchcases or of watches contained in said cases, into the erroneous belief that said watchcases are made of gold, or are plated with gold, and to divert trade to said respondent from its competitors who sell and distribute in interstate commerce watchcases which are truthfully stamped, branded, or labeled, and otherwise injure such competitors, and the said use by respondent of the term or designation "Goldcraft"; causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of watches or watchcases so branded, stamped, or labeled"; and said "alleged acts and practices," as charged, "are all to the prejudice of the public and of the respondent's competitors and constitute unfair methods of competition."

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission on June 17, 1931, issued complaint against the above-named respondent and caused the same to be served on June 18, 1931, in which complaint respondent was charged with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

By notice contained in said complaint against this respondent, respondent was notified and required within thirty days from the date of service of same, unless the time therefor were extended by order of the Commission, to file with the Commission an answer to said complaint, and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answers and failure to answer, said provision being set forth in said notice and providing in part as follows:

Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it, during the thirty-day period of time specified in the complaint herein, or at any time, made or filed answer to said complaint.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Knickerbocker Watch Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal 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 buying in the United States and Europe watchcases and watch movements and in selling the same to jewelry wholesalers and jobbers located in various States 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 principal place of business in the State of New York to the said purchasers thereof located in States other than the State of New York. Such wholesalers and jobbers sell said watch movements and watchcases to retailers who, in turn, sell the same to the ultimate purchasers thereof. In the 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 movements and watchcases 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 caused to be stamped, branded, and labeled and now causes to be stamped, branded, and labeled the said watchcases with the term and designation "Warwick Watch Co.—Goldcraft"; and said watchcases are and have been for more than one year last past resold to the public by said retailers, stamped, branded, or labeled with said term and designation. Such watchcases are not made of gold, and are not gold plated.

PAR. 3. The term or designation "Goldcraft" so stamped, branded, or labeled on said watchcases has the tendency and capacity to deceive ultimate purchasers of said watchcases or of watches contained in said cases, into the erroneous belief that said watchcases are made of gold, or are plated with gold, and to divert trade to said respondent from its competitors who sell and distribute in

Order

15 F. T. C.

interstate commerce watchcases which are truthfully stamped, branded, or labeled, and otherwise injure such competitors, and the said use by respondent of the term or designation, "Goldcraft," causes to be placed in the hands of said retailers the means of committing a fraud upon ultimate purchasers of watches or watchcases so branded, stamped, or labeled.

CONCLUSION

The acts and things done by respondent under the conditions and circumstances described in the foregoing are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce and constitute a violation of the 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

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 17th day of June, A. D. 1931, issued its complaint against Knickerbocker Watch Co., a corporation, respondent herein, and caused the same to be served upon said respondent on the 18th day of June, 1931, 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.

The respondent not having filed an answer to the complaint and failure to file an answer within the time provided by the rules of practice and procedure by the Commission being deemed an admission of the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint, all of which the respondent had due notice and knowledge of, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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 respondent, Knickerbocker Watch Co., a corporation, its agents, representatives, and employees do cease and desist from doing directly or indirectly any and all of the acts designated and set forth in paragraph 1 hereof in connection with the

287

Order

sale or offering for sale of watchcases in interstate commerce, or within the District of Columbia, as follows:

PARAGRAPH 1. Using the word gold or the word goldcraft as a trade name or trade brand for watchcases or on labels, tags, containers, business stationery, or in advertising or otherwise to designate or describe watchcases which are not made in whole or in part of gold.

PAR. 2. It is further ordered that respondent, within 60 days from and after the date of service upon it of this order shall file with the Commission a report, or reports, 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
CONSOLIDATED BOOK PUBLISHERS, INCORPORATED
SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

Docket 1538. October 2, 1931

Supplemental findings and conclusion based on additional testimony taken pursuant to leave of court¹ and establishing use of methods condemned by the Commission in the original findings and order,² by respondent in the sale of its encyclopedia, through the subscription method, to subscribers throughout the United States, in competition with those who did not and do not employ such methods in the sale of their publications, with the capacity and tendency to and the effect of injuring such competitors through diverting from them to respondent sales of encyclopedias to persons believing respondent's false representations to be true, and purchasing its publication in and because of such belief, prejudicing the public against the subscription book industry as a whole and making it difficult for competitors to obtain interviews for soliciting the sale of their publications, and causing loss of confidence on the part of the public in the representations of competing publishers who do not use such methods or make such representations.

Mr. G. Ed. Rowland for the Commission.

Mr. Ramond P. Fischer, of Campbell, Clithero & Fischer, of Chicago, Ill., and *Mr. Charles J. Calderini* and *Mr. Edward W. Everett*, of Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

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, after having issued its complaint against respondent, Consolidated Book Publishers, Inc., said respondent having made answer thereto, testimony having been taken on behalf of the Commission and respondent, brief having been filed on behalf of both parties, and oral argument heard by the Commission, on May 6, 1930, made its findings as to the facts and conclusion, and issued its order to cease and desist against the respondent herein.

Thereafter respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit to review said order of the Commission, and the record in the case was certified to said court, briefs on behalf of both parties filed with the court, and the case orally argued before said court on April 23, 1931.

¹ Following appeal of the Commission's order, 14 F. T. C. 13, and decision of the Supreme Court in the *Raladam case*, 283 U. S. 643.

² Sale by respondent of its set under two different names, and use of the so-called "give-away" method of sale.