

IN THE MATTER OF
ALGREN MANUFACTURING COMPANY, INC.

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

Docket 3200. Complaint, Aug. 10, 1937—Decision, July 9, 1940

Where a corporation engaged in manufacture of jewelry findings, including wrist watch buckles, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in manufacture of such products, and in sale and distribution thereof to jobbers in commerce among the various States and in said District of Columbia—

Sold its said jewelry findings and buckles with words "Gold Filled," which it had caused to be stamped, branded, or imprinted thereon, to jobbers by whom they were offered and sold, thus branded, to consuming public, facts being, minimum standard for marking of gold-filled articles other than watch cases, as accepted by jewelry manufacturing trade, which had generally adopted use of certain terms in describing gold-covered articles as descriptive of process used in applying gold thereto and as designating quality, quantity, and character of gold thus applied, and as representations to general public that articles were made, and gold applied, in conformity with certain set standards, is one-twentieth by weight of 10-carat gold, and said wrist watch buckles did not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated, or referred to as "Gold Filled," but contained 12-carat gold to extent only of one-fiftieth of their weight, and not equivalent to one-twentieth by weight of 10-carat gold, in accordance with minimum standard aforesaid for articles properly designated as "Gold Filled" and generally accepted by trade and substantial portion of general purchasing public as being of character and weight superior to articles made by processes designated as "Gold Plate" and "Gold Electro-Plate";

With result, through use of such false and misleading statement, of placing in hands of jewelry jobbers aforesaid, instrument and means whereby they might perpetrate a fraud upon substantial portion of retailers, and both jobbers and retailers upon substantial portion of consuming public, by enabling them falsely to represent, offer, and sell said wrist watch buckles as being superior to other articles not so branded, and as being of same quality and value as other articles truthfully branded "Gold Filled," and with effect that substantial portion of retailers aforesaid and of consuming public, believing that words "Gold Filled" denoted quality exceeded only by solid gold or carat gold, were led, because of such belief, to purchase its said product, and with further result that its said acts and practices constituted added inducements for substantial number of jobbers and retail and consuming purchasers to buy such product, and unfairly diverted substantial volume of trade from many competitors who conform to set standards above referred to and do not brand as "Gold Filled" wrist watch buckles or other jewelry findings which do not contain by weight at least 5 percent gold of a fineness of at least 10 carats; to the substantial injury of competition in commerce;

Held, That such acts and practices were all to the prejudice of the public and of competitors and constituted unfair methods of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Henry S. Sellin, of New York City, and *Mr. Lucien Nemser*, of Brooklyn, N. Y., for respondent.

COMPLAINT

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, having reason to believe that the Algren Manufacturing Co., Inc., a corporation, hereinafter referred to as respondent, is now, and has been, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Algren Manufacturing 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 office and principal place of business located at 8 Washington Place, in the city of New York, State of New York, and is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, in commerce as hereinafter set out.

PAR. 2. Said respondent, being engaged in the business as aforesaid, causes said jewelry findings, including wrist watch buckles, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in various cities and other States of the United States and the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said jewelry findings, including watch buckles, so sold and distributed by respondent between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with individuals, firms, and corporations engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, as herein described, to jobbers and retailers in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase said wrist watch buckles, the respondent caused the words "Gold Filled" to be stamped, branded, or imprinted upon said buckles.

Respondent sells its jewelry findings, including wrist watch buckles, as described in paragraph 4 hereof, to jobbers and retailers who in turn offer for sale and sell the articles to the consuming public branded "Gold Filled."

PAR. 5. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names so used are descriptive of the process used in applying gold to the manufactured articles, and also designate the quality, quantity, and character of the gold so applied to the articles, and serve as representations to the general purchasing public that the articles were manufactured, and the gold applied, in conformity, with certain set standards. The designations generally adopted by the trade with respect to articles that are not of solid gold are: "Gold Filled," "Rolled Gold Plate," "Gold Plate," and "Gold Electro-Plate." In the process of manufacturing articles designated as "Gold Filled," a substantial quantity of gold in weight and thickness is applied to the base metal core, and these articles truthfully designated as "Gold Filled" are generally accepted by the trade and a substantial portion of the general purchasing public as being of a character and quality superior to articles manufactured by the processes designed as "Gold Plate" and "Gold Electro-Plate."

PAR. 6. In truth and in fact, the respondent's wrist-watch buckles described in paragraph 4 do not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated or referred to as "Gold Filled."

PAR. 7. The foregoing false and misleading statement on the part of the respondent places in the hands of the aforesaid jewelry jobbers an instrument and means whereby said jobbers may perpetrate a fraud upon a substantial portion of the retailers, and both jobbers and retailers upon a substantial portion of the consuming public, by enabling them to falsely represent, offer for sale, and sell respondent's wrist watch buckles as being superior to other articles not so branded and as being of equal quality and value with other articles truthfully branded "Gold Filled." A substantial portion of said retailers and of the consuming public are of the opinion that the words "Gold Filled" denote a quality exceeded only by solid gold or carat gold, and are thus led to purchase respondent's product engendered by said belief.

PAR. 8. There are among the competitors of respondent many persons, firms, and corporations who in no way misrepresent the composi-

tion, nature, character, or quality of the jewelry findings, including wrist-watch buckles, which they manufacture, sell, and distribute.

The aforesaid acts and practices of the respondent are added inducements for a substantial number of jobbers, retail purchasers, and consuming purchasers to buy respondent's product, and have a tendency and capacity to, and do unfairly divert a substantial volume of trade to respondent from its said competitors. As a consequence thereof, substantial competition in commerce among and between the various States of the United States and in the District of Columbia has been substantially injured.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of section 5 of an act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 10, 1937, issued and served its complaint in this proceeding upon respondent Algren Manufacturing Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint and in opposition thereto were introduced by Morton Nesmith and S. Brogdyne Teu, II, attorneys for the Commission, and Henry S. Sellin, counsel for the respondent, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer, testimony, and other evidence, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Algren Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by vir-

tue of the laws of the State of New York, with its office and principal place of business located at 8 Washington Place, in the city of New York, State of New York, and is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist-watch buckles, in commerce.

PAR. 2. Said respondent, being engaged in the business as aforesaid, caused said jewelry findings, including wrist-watch buckles, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in various cities in other States of the United States and the District of Columbia, and there is now, and has been at all times mentioned herein, a current of trade and commerce in said jewelry findings, including wrist-watch buckles, so sold and distributed by respondent between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with individuals, firms, and corporations engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, as herein described, to jobbers in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase wrist-watch buckles, the respondent caused the words "Gold Filled" to be stamped, branded, or imprinted upon said buckles.

Respondent sells its jewelry findings, including wrist-watch buckles as hereinbefore described, to jobbers who in turn offer for sale and sell the articles to the consuming public branded "Gold Filled."

PAR. 5. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names so used are descriptive of the process used in applying gold to the manufactured articles, and also designate the quality, quantity, and character of the gold so applied to the articles, and serve as representations to the general purchasing public that the articles were manufactured, and the gold applied, in conformity with certain set standards. The designations generally adopted by the trade with respect to articles that are not of solid gold are: "Gold Filled," "Rolled Gold Plate," "Gold Plate," and "Gold Electro-Plate." In the process of manufacturing articles designated as "Gold Filled," a substantial quantity of gold in weight and thickness is applied to the base metal core. The minimum standard for the marking of gold-filled articles other than watch cases as accepted by the trade is one-twentieth by weight of 10-carat gold. The fraction preceding the carat mark or fineness designation denotes the correct proportion of the weight of the gold to

the weight of the entire article. These articles are properly designated as "Gold Filled" and are generally accepted by the trade and a substantial portion of the general purchasing public as being of a character and weight superior to articles manufactured by the processes designated as "Gold Plate" and "Gold Electro-Plate."

PAR. 6. In truth and in fact, the respondent's wrist-watch buckles, described in paragraph 4, made before 1937, did not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated, or referred to as "Gold Filled." They contained 12-carat gold only to the extent of one-fiftieth of their weight, which is not equivalent to one-twentieth by weight of 10-carat gold.

PAR. 7. The use of the foregoing false and misleading statement by the respondent places in the hands of the aforesaid jewelry jobbers an instrument and means whereby said jobbers may perpetrate a fraud upon a substantial portion of the retailers, and both jobbers and retailers upon a substantial portion of the consuming public by enabling them to falsely represent, offer for sale, and sell respondent's wrist watch buckles as being superior to other articles not so branded and as being of equal quality and value with other articles truthfully branded "Gold Filled." A substantial portion of said retailers, and of the consuming public, are of the opinion that the words "Gold Filled" denote a quality exceeded only by solid gold or carat gold, and are led to purchase respondent's product because of such belief.

PAR. 8. There are among the competitors of respondent many persons, firms, and corporations who conform to the set standards referred to in paragraph 5 above and do not brand wrist watch buckles or other jewelry findings "Gold Filled" unless they contain by weight at least 5 percent gold of a fineness of at least 10 carats.

PAR. 9. The aforesaid acts and practices of the respondent are added inducements for a substantial number of jobbers, retail purchasers, and consuming purchasers to buy respondent's product, and have a tendency and capacity to, and do unfairly divert a substantial volume of trade to respondent from its said competitors. As a consequence thereof competition in commerce among and between the various States of the United States and in the District of Columbia has been substantially injured.

CONCLUSION

The foregoing acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

31 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief on behalf of the Commission filed herein by Morton Nesmith, counsel for the Commission (respondent having waived the filing of brief), oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Algren Manufacturing Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of wrist watch buckles in interstate commerce or in the District of Columbia do forthwith cease and desist from:

Using the term "gold filled" or any other term or word of similar import and meaning as a brand, stamp, or label upon or for wrist watch buckles, unless such buckles shall have an alloyed gold content of one-twentieth by weight of 10-carat gold.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

JOHN B. ROCHE, TRADING AS THE G-H-R ELECTRIC
DILATOR COMPANY AND THE ROCHE ELECTRIC
MACHINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3772. Complaint, Apr. 25, 1939—Decision, July 9, 1940*

Where an individual engaged in sale and distribution of Electric Thermoitis Dilator for use in treatment of prostate gland, and of his Electric Hygienic Machine for use, as recommended by him, in treatment of various ailments, diseases and conditions, to purchasers in the various other States and in competition with others engaged in sale and distribution of like or similar devices, and of preparations, remedies, and treatments for use and useful in treatment of ailments, diseases, and conditions for which he recommended his said devices, in commerce also among the various States and in the District of Columbia; in advertisements of his said devices which he disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals of general circulation, and also in circulars and other printed or written matter distributed in commerce among and between the various States, and by other means in commerce, and which advertisements were intended or likely to induce purchase of his said devices—

- (a) Represented, directly and by implication, that prostate disorders are responsible for many of the ailments, diseases, and conditions of the human body, including impotency, kidney weaknesses, loss of vitality, constipation, piles, and sexual decline, and that use of his Electric Thermoitis Dilator device would cure prostate disorders and the ailments, diseases, and conditions caused thereby; and
- (b) Represented, as aforesaid, that the use of his said Dilator would stop the wasting away of tissues and keep glands vigorous and strong, enabling one to feel and look young at 80, and that said device was useful and effective in treatment of frigidity and would eliminate lack of procreative impulse, and was useful generally in renewing vigor and vitality and would produce beneficial results where all other treatments and methods had failed, and would restore and preserve prostate gland;

Facts being said dilator, while it might have some beneficial effects on congested prostatic conditions because of heat generated in said device, had no value in treatment of prostatic disorders and its use would not cure such disorders, and use thereof was not a cure or remedy for, or a competent treatment of, impotency, kidney weakness, or other ailments and conditions above set forth, and would not stop wasting away of tissues or keep glands vigorous and strong, would have no effect on conditions due to age, and would not make user thereof feel and look young at 80, and use of said device was of no value in treatment of frigidity and would not eliminate lack of procreative impulse or be useful in renewing vigor and vitality; and

- (c) Represented, as aforesaid, that use of said Electric Hygienic Machine would take place of exercise and massage and all other vibrators and would re-