

Complaint

IN THE MATTER OF

MERVIN WINEHOLT, TRADING AS WINEHOLT COMPANY
AND MERVIN WINEHOLT COMPANY

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

Docket 4691. Complaint, Jan. 30, 1942—Decision, Apr. 29, 1942

Where an individual, engaged in the interstate sale and distribution of watches and pistols, among other things; by advertisements in newspapers, magazines and trade journals, and by folders, pamphlets, circulars, and other advertising matter, directly or by implication—

- (a) Represented that the watch he sold at \$1.98 was unconditionally guaranteed to have a useful life and to render satisfactory service under normal usage for 5 years, its movement finely tested, and that the case contained gold; and
- (b) Represented through use of words "Locomotive" and "R. R. Dial" that it was a "Railroad watch" or comparable thereto, and enhanced such implication by pictorial representations showing large hands and large, distinct hour numerals, and, through use of words "Railroad engraved back," that its back was engraved;

The facts being said watch did not have a useful life, but repairs of parts would be necessary long before expiration of 5 years; back thereof was not engraved, but design was stamped thereon mechanically; movement was not finely tested; case contained no gold whatever; and product did not possess the desirable characteristics and dependability of a "Railroad" watch as long understood by purchasing public as an especially accurate and dependable watch required for use by railroad employees, but was only a cheap imitation thereof; and

- (c) Falsely represented that the pistols he sold at \$6.45 were regularly sold at retail at \$12, and that his price of \$6.45 was a special price available for a limited time only;

With effect of misleading and deceiving a substantial portion of the public into the belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase substantial quantities of said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Maurice C. Pearce for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mervin Wineholt, an individual, trading as Wineholt Co., and Mervin Wineholt Co., hereinafter referred to as respondent, has violated the provisions of

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said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Mervin Wineholt, is an individual, trading and doing business as Wineholt Co. and Mervin Wineholt Co., with his office and principal place of business located in Woodbine, State of Pennsylvania.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various kinds of merchandise, including watches and pistols in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes his said products, when sold by him, to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of the aforesaid watches and pistols, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading representations relative to his said products, such statements and representations being made by advertisements inserted in newspapers, magazines, and trade journals, and by means of folders, pamphlets, circulars, letters, and other advertising matter, circulated and distributed generally among prospective purchasers. Among and typical of such false and misleading representations relative to respondent's watches and pistols, respectively, are the following:

Watches:

\$1.98.

5 years guarantee.

* * * railroad engraved back * * *.

Finely tested quick train lever movement.

* * * Solid gold effect case * * *.

Locomotive Gilt—R. R. Dial * * *.

Pistols:

Final sale RUSH!

Only \$6.45.

* * * Cost \$12 elsewhere.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, the respondent has represented and now represents, directly or by im-

plication, that the watch sold by him at the price of \$1.98 is unconditionally guaranteed to have a useful life and to render satisfactory services under normal usage for a period of 5 years; that the back thereof is engraved; that the movement is finely tested and that the case contains gold.

Through the use of the words "Locomotive" and "R. R. Dial" in connection with and as descriptive of said watch respondent implies that said watch is a "Railroad Watch" or comparable to such grade of watch. "Railroad" watches are known and understood by the purchasing public to be watches possessing the accuracy and dependability required for use by railroad employees and are considered to be especially valuable and desirable. Respondent enhances the implication that said watches are "Railroad Watches" by pictorial representations showing large hands and large distinct hour numerals, which features are generally found in genuine "Railroad Watches." Through the use of the words "Railroad Engraved Back" respondent represents that the back of said watch is engraved. Engraving is understood by the public as describing a process whereby a design is cut or incised into the metal by hand.

Further, respondent represents that the pistols sold by him at the price of \$6.45 are regularly sold at retail at \$12 and that the price of \$6.45 is a special price available for a limited time only.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact the watches sold by respondent for \$1.98 do not have a useful life and will not render satisfactory service for a period of 5 years, but on the contrary the parts will wear to the extent that repairs will be necessary long before the 5-year period has expired. The back of said watch is not engraved, as engraving is commonly understood, but the design thereon is stamped mechanically by a die. The movement of said watch is not finely tested, but on the contrary any tests that are made are superficial and of small extent and short duration. The case of said watch contains no gold whatsoever. Said watch does not possess the desirable characteristics and dependability of a "Railroad" watch, but on the contrary is only a cheap imitation thereof.

The pistols advertised and sold by respondent are not regularly sold at retail for \$12 and \$6.45 is not a special price for a limited time, but is, in fact, the regular retail selling price of said pistol.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such

statements and representations are true and causes the public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's products.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 30, 1942, issued and thereafter served its complaint in this proceeding upon respondent Mervin Wineholt, an individual trading as Wineholt Co. and Mervin Wineholt Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer 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, Mervin Wineholt, is an individual trading and doing business as Wineholt Co. and Mervin Wineholt Co., with his office and principal place of business located in Woodbine, State of Pennsylvania.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various kinds of merchandise, including watches and pistols, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes his products, when sold by him, to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of

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trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of the watches and pistols, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading representations relative to his products, such statements and representations being made by advertisements inserted in newspapers, magazines and trade journals, and by means of folders, pamphlets, circulars, letters and other advertising matter, circulated and distributed generally among prospective purchasers. Among and typical of such false and misleading representations relative to respondent's watches and pistols, respectively, are the following:

Watches:

\$1.98

5 years guarantee.

* * * railroad engraved back * * *

Finely tested quick train lever movement

* * * Solid gold effect case * * *

Locomotive Gilt—R. R. Dial * * *

Pistols:

Final Sale Rush!

Only \$6.45

* * * Cost \$12 elsewhere.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, the respondent has represented and now represents, directly or by implication, that the watch sold by him at the price of \$1.98 is unconditionally guaranteed to have a useful life and to render satisfactory service under normal usage for a period of 5 years; that the back thereof is engraved; that the movement is finely tested and that the case contains gold.

Through the use of the words "Locomotive" and "R. R. Dial" in connection with and as descriptive of said watch respondent implies that said watch is a "Railroad Watch" or comparable to such grade of watch. "Railroad" watches are known and understood by the purchasing public to be watches possessing the accuracy and dependability required for use by railroad employees and are considered to be especially valuable and desirable. Respondent enhances the implication that watches are "Railroad Watches" by pictorial representations showing large hands and large distinct hour numerals, which features are generally found in genuine "Railroad Watches." Through the use of the words "Railroad Engraved Back" respondent represents

that the back of said watch is engraved. Engraving is understood by the public as describing a process whereby a design is cut or incised into the metal by hand.

Further, respondent represents that the pistols sold by him at the price of \$6.45 are regularly sold at retail at \$12 and that the price of \$6.45 is a special price available for a limited time only.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact the watches sold by respondent for \$1.98 do not have a useful life and will not render satisfactory service for a period of 5 years, but on the contrary the parts will wear to the extent that repairs will be necessary long before the 5-year period has expired. The back of said watch is not engraved, as engraving is commonly understood, but the design thereon is stamped mechanically by a die. The movement of said watch is not finely tested, but on the contrary any tests that are made are superficial and of small extent and short duration. The case of said watch contains no gold whatsoever. Said watch does not possess the desirable characteristics and dependability of a "Railroad" watch, but on the contrary is only a cheap imitation thereof.

The pistols advertised and sold by respondent are not regularly sold at retail for \$12 and \$6.45 is not a special price for a limited time, but is, in fact, the regular retail selling price of said pistol.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and causes the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives

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all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mervin Wineholt, individually and trading as Wineholt Co. and Mervin Wineholt Co., or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of his merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's watches will render satisfactory service for a period of 5 years, or for any other specified period of time in excess of that during which such watches will in fact render satisfactory service.

2. Representing that the cases of respondent's watches are engraved, unless the design is cut or incised into the metal by hand.

3. Representing that the movements of respondent's watches are finely tested, when any tests given such movements are superficial and of short duration.

4. Representing that the cases of respondent's watches contain gold or that they have a solid gold effect.

5. Using the words "Locomotive" or "Railroad" or the abbreviation "R. R.," or any other words or abbreviations of similar import, to designate, describe or refer to respondent's watches, or representing in any manner that respondent's watches are railroad watches.

6. Representing, directly or by implication, that the prices at which respondent offers his merchandise for sale are special or reduced prices, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices at which respondent sells such merchandise in the normal and usual course of business.

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

IN THE MATTER OF

THE SEBRONE COMPANY, FEDERAL COSMETIC SALES CORPORATION, ET AL.

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

Docket 4230. Complaint, Aug. 9, 1940—Decision, May 1, 1942

Where two corporations and several officers and directors thereof, who controlled their advertising policies and business activities, engaged in the manufacture and interstate sale and distribution of two cosmetic and medicinal preparations known as "Sebrone" and "Waft"; by means of advertisements through the mails and in newspapers and periodicals, and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature, directly and by inference—

- (a) Falsely represented that their preparation "Sebrone" was a new scientific discovery and a cure or remedy for dandruff which would destroy the germ which allegedly causes it, and would remove scar tissue and prevent baldness, tending, through use without proper qualification of such words as "Stops dandruff," "Ends dandruff," "Defeats dandruff," to mislead and deceive the public into the belief that product in question would permanently cure dandruff or the underlying condition responsible therefor;

The facts being said product was not a new scientific discovery but its ingredients have long been used by physicians in various combinations, and while its use was beneficial in assisting in the temporary removal of dandruff scales and in clearing up superficial infections associated with dandruff, its therapeutic value was limited thereto; it would not act as a permanent cure or remedy for dandruff, generally thought by the medical profession to be symptomatic of some underlying cause and often associated with various diseased conditions of the skin; and it had absolutely no value in connection with scar tissue, which nothing will remove except surgery; and

- (b) Falsely represented that their preparation "Waft" was a new scientific discovery which would reduce excessive sweating to normal and remove and kill odors from the feet and body;

The facts being that product in question, by reason of its content of formaldehyde, long used by the medical profession as an antiseptic and deodorant, had value as an antiseptic, but was not a new scientific discovery; and its effect as a deodorant was limited to masking odors, which, however, it did not destroy; its astringent properties could have but slight effect upon condition of excessive sweating due to many causes, such as endocrine disorders, general malnutrition, debilitating diseases, and heredity; and it would not reduce such sweating to normal;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it, because of said mistaken belief, to purchase substantial quantities of said preparations: