

Complaint

36 F. T. C.

IN THE MATTER OF

PAUL J. SIMMONS, DOING BUSINESS AS HARLEM
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4843. Complaint, Sept. 30, 1942—Decision, Feb. 23, 1943*

Where an individual, engaged in interstate sale and distribution of jewelry and novelties; in advertisements in periodicals and in pamphlets, folders, and other advertising matter—

- (a) Represented that rings advertised to sell for \$1 each were set with real diamonds, through such statements as "Real Diamond Ring Simulated"; the facts being said products were set with imitation stones;
- (b) Represented that a matching wedding band was "given free" with each purchase of a diamond ring, through such statements as "Free Matching Wedding Band Set With Flashing Stones" and "To Introduce This Amazing Value We Offer a Matching Band Absolutely Free"; when in fact their cost was included in purchase price of the ring, and they formed part of a combination offer; and
- (c) Made use of term "yellow or white gold effect" in describing his rings, with tendency and capacity to confuse purchasers as to whether such rings were made of metallic gold, or merely had a gold color; the facts being they contained no appreciable amount of gold, either yellow or white;

With effect of misleading and deceiving a portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said jewelry:

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.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. George Landesman, of New York City, for respondent.

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 Paul J. Simmons, an individual, trading as Harlem Co., hereinafter referred to as respondent, has violated the provisions of 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. Respondent, Paul J. Simmons, is an individual, trading as Harlem Co., having his office and principal place of business located at 30 Church Street, New York, N. Y.

The respondent is now, and for more than 2 years last past has been, engaged in the business of offering for sale, sale, and distribution of jewelry and novelties to purchasers thereof 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, to be shipped from his said place of business in the State of New York 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 jewelry and novelties in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his jewelry, the respondent has disseminated false and misleading statements and representations with respect to his said products. Such false and misleading statements and representations have been inserted in magazines having a general circulation, and also in pamphlets, folders, and other advertising matter distributed to purchasers and prospective purchasers situated in various States of the United States. Among and typical of such false and misleading statements and representations are the following:

Real diamond ring, simulated \$1.00.

Free! Matching wedding band, set with flashing stones.

Free! To introduce this amazing value we offer a matching band absolutely free.

Yellow or white gold effect.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import, not specifically set out herein, the respondent represents, and has represented, directly and by implication, that his rings so advertised to sell for \$1 each are in fact set with "real" diamonds; that said rings contain an appreciable amount of yellow or white gold; and that a matching wedding band is given "free" to each purchaser of a diamond ring.

PAR. 4. The foregoing statements and representations disseminated by the respondent in the manner aforesaid are false, misleading, and deceptive. In truth and in fact, said rings offered for sale and sold by respondent at \$1 each do not contain real diamonds, but are set with imitation stones. The rings represented as being gold do not contain any appreciable amount of gold, either yellow or white. Said wedding bands offered free to each purchaser of a ring are not given free to each purchaser thereof, but the cost of such wedding band is

Findings

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included in the purchase price of said rings, and such rings form part of a combination offer.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to respondent's jewelry has had, and now 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 induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

PAR. 6. The aforesaid acts and practices of the 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 September 30, 1942, issued and subsequently served its complaint in this proceeding upon respondent, Paul J. Simmons, an individual, trading as Harlem Co., charging him with unfair and deceptive acts and practices in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's answer thereto, at a hearing before an examiner of the Commission theretofore duly designated by it, a stipulation as to the facts was read into the record in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and it was agreed that the Commission may proceed upon said statement of facts to make its findings as to the facts and its conclusion based thereon and issue its order disposing of this proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts; 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. Respondent, Paul J. Simmons, is an individual, trading as Harlem Co., having his office and principal place of busi-

ness located at 30 Church Street, New York, N. Y. The respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing jewelry and novelties. Respondent causes his said products, when sold, to be shipped from his said place of business in the city of New York 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 jewelry and novelties in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his jewelry, the respondent has disseminated misleading statements and representations with respect to his said products. Such misleading statements and representations have been inserted in magazines having a general circulation and also in pamphlets, folders, and other advertising matter distributed to purchasers and prospective purchasers situated in various States of the United States. Among and typical of such misleading statements and representations are the following:

Real Diamond Ring Simulated, \$1.

Free Matching Wedding Band Set With Flashing Stones.

To Introduce This Amazing Value We Offer a Matching Band Absolutely Free.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents, and has represented, directly and by implication, that his rings so advertised to sell for \$1 each are, in fact, set with real diamonds and that a matching wedding band is given "free" to each purchaser of a diamond ring.

PAR. 4. The foregoing statements and representations disseminated by the respondent in the manner aforesaid are misleading and deceptive. In truth and in fact, said rings offered for sale and sold by respondent at \$1 each do not contain real diamonds but are set with imitation stones. The rings do not contain any appreciable amount of gold, either yellow or white. Said wedding bands offered "absolutely free" to each purchaser of a ring are not given free to each purchaser thereof, but the cost of such wedding band is included in the purchase price of the ring required to be purchased and such wedding band forms part of a combination offer.

PAR. 5. The Commission further finds that respondent used the term "yellow or white gold effect" to describe the rings which he offered for sale. Respondent stated that he did not intend the use of such phrase to constitute a representation that such rings contained

an appreciable amount of either yellow or white gold, but he also admitted, and the Commission finds, that the use of such phrase does in fact have the capacity and tendency to confuse a portion of the purchasing public with respect to whether such rings are in fact made of metallic gold or merely have a gold color.

PAR. 6. The use by the respondent of the foregoing deceptive and misleading statements, representations, and advertisements with respect to respondent's jewelry has had, and now has, the capacity and tendency to, and does, mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

CONCLUSION

The aforesaid acts and practices of the 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, respondent's answer, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Paul J. Simmons, an individual, trading as Harlem Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of jewelry and novelties in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "real diamond rings simulated," or any other term of similar import or meaning, to describe or in any way refer to rings which are made with imitation stones, or otherwise representing that rings which are made with imitation stones are made with diamonds.

2. Using the term "yellow or white gold effect," or any other term of similar import or meaning, to in any way describe or refer to rings which do not contain an appreciable amount of metallic gold.

3. Representing in any way that an article which is in fact part of a combination offer is a free gift, or is given free or without cost, or representing that any article which may be obtained upon the purchase of another article is given free or without cost.

It is further ordered, That 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

AMERICAN INDUSTRIAL RUBBER COMPANY, DOING
BUSINESS AS NU-TRED TIRE AGENCY, CHAMPION
RUBBER COMPANY, L. & S. TIRE DISTRIBUTORS, AND
HARVESTER TIRE SALES: AND HAROLD TRILLING,
MANNY G. TENENBAUM, OLIN K. LEWIS, AND E. F.
SMITHCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4819. Complaint, Aug. 20, 1942—Decision, Mar. 2, 1943

Where a corporation, two individuals who were its general manager and sales manager and directed and controlled its business practices, and its regional sales manager who had authority to conduct business under various trade names employed by it and, in addition to personally selling its products, procured subagents and other salesmen to sell them; engaged in the purchasing and recapping of old automobile tires and interstate sale and distribution of said recapped products—

- (a) Represented, directly and by implication, through statements in advertising circulars, price lists, order blanks, and other printed matter distributed to prospective salesmen, salesmen, and dealers, that their recapped tires were of unusually high quality and would render satisfactory service over extended periods of time; and
- (b) Represented, as aforesaid, that only those casings were used by them for recapping which were of high quality and free from serious defects, and that before any casings were so used, they were carefully examined, tested, and repaired;

The facts being their said products were decidedly inferior; casings used—usually obtained from peddlers and junk dealers—were, in many instances, wholly unfit for recapping, being old, badly worn, and weak, frequently with large cracks and other serious defects; no serious effort was made to inspect or test casings before purchase; and many were beyond repair; and

- (c) Represented, as aforesaid, that their tires were guaranteed to render satisfactory service for 6 months or some other designated period, and that only in exceptional instances would they fail to render such service;

The facts being they did not give satisfactory service; mileage obtained was often negligible, they lasting, in some cases, only a few weeks or days before blow-outs; and so-called guarantee—which was, in fact, an agreement to supply another tire at half-price if original did not render satisfactory service for designated period of time—was, under the circumstances, of little or no practical benefit to the purchaser; and

- (d) Supplied to their salesmen for display to prospective purchasers cross-sections of tires purporting to be samples of their said products, which were in fact not representative but far superior to the casings actually used by them;