

Complaint

IN THE MATTER OF

ALFRED JOHNSON SMITH, PAUL SMITH, AND ARTHUR SMITH,
DOING BUSINESS AS JOHNSON SMITH & COMPANY

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

Docket 4778. Complaint, June 29, 1942—Decision, Mar. 3, 1943

Where three individuals, engaged in interstate sale and distribution of various articles, including watches—

Represented certain watches in their catalogues as "Railroad Watches" and "Railroad Type Watches," with, in some cases, the outline of a locomotive stamped on the back of the watch;

Notwithstanding the fact that said articles were in no sense railroad watches, which—known and designated as such by watch makers and the public generally—possess certain distinctive features in design and workmanship and meet high standards and stringent tests as to accuracy and dependability; possessed none of such distinctive mechanical features, but were of inferior construction; and were not comparable with railroad watches as to accuracy and dependability;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and quality of said watches, thereby causing its purchase thereof because of such mistaken belief:

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

Before *Mr. John P. Bramhall*, trial examiner.

Mr. L. E. Creel, Jr., 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 Alfred Johnson Smith, Paul Smith and Arthur Smith, copartners, doing business as Johnson Smith & Co., hereinafter referred to as respondents, have 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. Respondents, Alfred Johnson Smith, Paul Smith and Arthur Smith, are copartners, doing business as Johnson Smith & Co., with their office and principal place of business located at 6615 East Jefferson Avenue, Detroit, Mich.

Complaint

36 F. T. C.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of watches and other articles of merchandise. Respondents cause their said merchandise, when sold by them, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof located at points in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 their aforesaid business and for the purpose of inducing the purchase of their merchandise, the respondents have made many false, misleading, and deceptive statements and representations relative to their said watches in circulars, pamphlets, letters, and other written or printed matter and in advertisements inserted in newspapers, magazines, and trade journals, all of which are circulated and distributed among prospective purchasers. Among and typical of such false and misleading and deceptive statements and representations are the following:

On Time, All the Time with the Railroad Watch.

An Excellent Pocket Watch for \$1.75.

An American made pocket watch with two-tone dial and locomotive design back—fully guaranteed for only \$1.75.

The Railroad Watch is regular 16 size, guaranteed to keep accurate time. * * *

RAILROAD TYPE WATCH

An accurate, dependable watch selling for a remarkably low price and modeled after the famous RAILROAD WATCHES.

RAILROAD TYPE WATCH \$1.95

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning, not specifically set out herein, respondents represent, and have represented, directly or by implication, that said watches are genuine "Railroad" watches. "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. Respondents enhance the implication that said watches are genuine "Railroad" watches by pictorial representations showing said watches with large hands, large distinct hour numerals, and in the Railroad Type Watch small minute numerals, which features are generally found in genuine "Railroad" watches.

In addition, such pictorial representations show the outlines of a locomotive stamped on the back of the watch.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' watches are not genuine "railroad" watches, and possess none of the essential features and construction required of watches to be used by railroad employees. They are of the cheapest construction, and only simulate in appearance genuine "railroad" watches.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said watches, disseminated as aforesaid, 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, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' watches.

PAR. 7. The aforesaid acts and practices of the respondents, 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 meaning and intent 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 June 29, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, copartners, doing business as Johnson Smith & Co., charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of that act. After the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by respondents, before a trial examiner of the Commission theretofore duly designated by it, and such 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 the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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 respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, are copartners, doing business, under the name Johnson Smith & Co., with their office and principal place of business located at 6615 East Jefferson Avenue, Detroit, Mich. Respondents are now and for a number of years last past have been engaged in the sale and distribution of various articles of merchandise, including watches.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents distribute among prospective purchasers located at various points throughout the United States catalogs describing and depicting the various articles sold by them. Among the articles described in these catalogs are certain watches, described by respondents as "Railroad Watches" and "Railroad Type Watches." Some of the pictorial representations accompanying these descriptions show the outlines of a locomotive stamped on the back of the watch.

The evidence shows that there are certain types of watches known and designated by watch makers and by the public generally as railroad watches, such watches possessing certain distinctive features in design and workmanship, and meeting certain high standards and stringent tests as to accuracy and dependability. Only watches meeting such requirements may be used by railroad employees engaged in the operation of trains.

Respondents' watches are in no sense railroad watches. They are of inferior construction and possess none of the distinctive mechanical features required in genuine railroad watches. They are not comparable with railroad watches as to accuracy or dependability. The Commission therefore finds that the terms "Railroad Watch" and "Railroad Type Watch," as used by respondents to designate and describe their watches, are erroneous and misleading.

PAR. 4. The Commission finds further that the use by respondents of these erroneous and misleading representations has the tendency

and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and quality of respondents' watches, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' watches as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission therefore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, individually, and trading as Johnson Smith & Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Railroad" or the words "Railroad Type," or any other word or words of similar import, to designate or describe any watch which is not in fact a railroad watch possessing the accuracy and dependability required of watches used by railroad employees engaged in the operation of trains.

2. Representing in any manner that respondents' watches are railroad watches when such is not the fact.

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

IN THE MATTER OF
**WISCONSIN DELUXE DOLL & DRESS COMPANY, DOING
BUSINESS AS WISCONSIN DELUXE CORPORATION**

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

Docket 4830. Complaint, Sept. 2, 1942—Decision, Mar. 5, 1943

Where a corporation, engaged in competitive interstate sale and distribution of blankets, clocks, tableware, and numerous other articles—

Supplied its customers with assortments of its said merchandise, together with Bingo sets, through use of which the fortunate participant who was able to mark off on his card a vertical, horizontal or diagonal line made up of five numbers drawn by operator received one of said articles being thus distributed, value of which was in excess of money paid, others receiving nothing; and

Thereby supplied to and placed in the hands of its customers or operators means of conducting lotteries in the sale of its merchandise in accordance with such plan involving sale of a chance to procure an article at much less than its normal retail price, contrary to an established public policy of the United States Government, and in competition with many who do not use any sales method contrary to public policy;

With the result that many persons were attracted by its sales plan and the element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that of its aforesaid competitors; and with tendency and capacity, because of said game of chance, to divert trade unfairly to it from them:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Harvey C. Hartwig, of Milwaukee, Wis., 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 Wisconsin Deluxe Doll & Dress Co., a corporation, trading as Wisconsin Deluxe Corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the