

Complaint

42 F. T. C.

IN THE MATTER OF

EARL HALL, TRADING AS UNITED WATCH COMPANY

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

Docket 4653, Complaint, Dec. 5, 1941—Decision, Mar. 26, 1946

Where an individual engaged in the interstate sale and distribution of watches and other articles of merchandise—

- (a) Falsely represented, directly and indirectly, through statements in newspapers and periodicals and circulars, catalogs, and other advertising materials, that the wrist watch and "Locomotive Special" watch sold by him were of shockproof design and construction, and that the "Locomotive Special" was sold exclusively by him;
- (b) Falsely represented as aforesaid through use of the statement "to advertise our business and introduce our bargain list of Elgin watches" and other statements of similar import, that his wrist watch was an Elgin watch manufactured by the Elgin Watch Co.;
- (c) Falsely represented as aforesaid, through use of the words "Locomotive Special," that the watches so designated were railroad watches possessing the accuracy and dependability required for use by railroad employees; and
- (d) Made deceptive use of the term "yellow gold effect" and "gold effect" to describe his watch cases and thereby cause purchasers and prospective purchasers to believe that the same were made in part of gold or contained some gold, contrary to the fact;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and of thereby causing it to purchase substantial quantities of his said watches:

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. James A. Purcell*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Charles H. Rowan, 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 Earl Hall, an individual trading as United Watch 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. The respondent, Earl Hall, is an individual, trading and doing business as United Watch Co., with his office and principal place of business located at 213 Guarantee Bank Building, St. Cloud, Minn.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of watches and other articles of merchandise. Respondent causes his said merchandise, when sold by him, to be transported from his aforesaid place of business in the State of Minnesota 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 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 his aforesaid business and for the purpose of inducing the purchase of his merchandise, the respondent has made many false, misleading, and deceptive statements and representations relative to his 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:

SHOCK PROOF wrist watch \$1.95

* * * To advertise our business and introduce our bargain list of ELGIN WATCHES, we will send this elegant, new, small, thin streamline, SHOCK PROOF wrist watch, * * * for only \$1.95 * * *.

Sold only by us. Shockproof movement. No. 5—locomotive special * * * yellow gold effect case with locomotive embossed on back. Waldemar Knife and Chain Free. Complete set, \$2.50.

* * * Locomotive Special Pocket Watch with 60 Red minute numeral Engineers dial, shockproof movement and yellow gold colored case, with engraved effect front and Locomotive on back.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning, not specifically set out herein, the respondent represents and has represented, directly or by implication, that the wrist watch described, advertised, and sold by him at the price of \$1.95 is an Elgin watch and is of shockproof design and construction; that the case of the No. 5 locomotive special men's watch

described, advertised, and sold by him at the price of \$2.50 is gold and that the movement of said watch is of special shockproof design and construction and that said watch is sold only by the respondent; that a knife and chain are furnished free to the purchasers of said watches.

Through the use of the words "locomotive special" and "engineer's dial," in connection with the description of certain of his watches, respondent represents or implies that said watches are "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. Respondent enhances the implication that said watches are "railroad" watches by pictorial representations showing said watches with large hands, large distinct hour numerals, and 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 the wrist watch described and offered for sale at \$1.95 is not an Elgin watch, and is not of shockproof design and construction. The No. 5 locomotive special watch is not a "railroad" watch and possesses none of the essential features of design and construction required of watches to be used by railroad employees. It is of the cheapest construction and only simulates in appearance a genuine "railroad" watch. The case of said watch contains no gold whatsoever. Said watch is sold by others as well as by respondent. The movement of said watch is not of shockproof design and is not constructed in such a manner as to be shockproof. The knife and chain are not furnished free but are a part of a combination offer and the price thereof, including a profit to respondent, is included in and made a part of the purchase price of the watch.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 cause, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's watches.

PAR. 7. 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 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 December 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Earl Hall, an individual trading as United Watch 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 thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial 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. Subsequent thereto, the Commission issued its order dated February 23, 1943, reopening said cause for the taking of further testimony on the question of possible deception in the use of the term "yellow gold effect." Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence including supplemental testimony taken pursuant to the order of the Commission of February 23, 1943, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (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. Respondent, Earl Hall, is an individual trading and doing business as United Watch Co., with his office and principal place of business located at 213 Guarantee Bank Building, St. Cloud, Minn.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of watches and other articles of merchandise. Respondent causes his said merchandise, when sold by him, to be transported from his aforesaid place of business in the

State of Minnesota 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 merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In selling and distributing his various watches the respondent particularly features two cheaper watches, a wrist watch which sells for \$1.98 and a "Locomotive Special" watch, which sells for \$2.50 to the consumer. These watches are sold entirely on a mail-order basis, either direct to consumers or through local agents. In order to induce the purchase of his said products by prospective purchasers and agents and to induce the sale of his products by local agents, the respondent places advertisements of his products in various newspapers and periodicals, and issues various circulars, catalogs, and other advertising material. In such advertising disseminated by the respondent to induce the purchase of his products the respondent has made false, deceptive, and misleading statements and representations concerning his products. Among and typical of such false, misleading, and deceptive statements and representations are the following:

SHOCKPROOF WRIST WATCH \$1.95

* * * To advertise our business and introduce our bargain list of ELGIN watches, we will send this elegant, new, small, thin streamline, SHOCKPROOF Wrist Watch for only \$1.95. * * * Or men's thin gold effect, Locomotive Special RED minute dial pocket-watch, with FREE Knife and Chain set to match, only \$1.98.

SOLD ONLY BY US SHOCKPROOF MOVEMENT

NO. 5—LOCOMOTIVE SPECIAL. 60 RED MINUTE NUMERALS. YELLOW GOLD EFFECT CASE WITH LOCOMOTIVE EMBOSSED ON BACK. WAL-DEMAR KNIFE AND CHAIN FREE. COMPLETE SET \$2.50.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents and has represented directly and by implication that the wrist watch and "Locomotive Special" watch sold by the respondent are of shockproof design and construction and that the "Locomotive Special" is sold exclusively by the respondent. Through the use of the statement "to advertise our business and introduce our bargain list of Elgin watches" and other statements of similar import, the respondent represents, both directly and by implication, that his wrist watch is an Elgin watch manufactured by the Elgin Watch Co. Through the use of the words "Locomotive

Special" to designate and describe respondent's watches, respondent represents that the watches so described or designated are railroad watches possessing the accuracy and dependability required for use by railroad employees.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's wrist watches and "Locomotive Special" watches are not of shock-proof design and construction but are watches made exactly the same as other watches of the same grade, and respondent's "Locomotive Special" watches are not sold exclusively by the respondent, but, instead, are also sold by other dealers in watches. Respondent's wrist watches are not Elgin watches manufactured by the Elgin Watch Co. Respondent's "Locomotive Special" watch is not a railroad watch and possesses none of the essential features of design and construction required of watches to be used by railroad employees.

PAR. 6. The Commission further finds that the use by the respondent of the terms "yellow gold effect" and "gold effect" is deceptive and causes purchasers and prospective purchasers to believe that watch cases so described or designated are made in part of gold or contain some gold when in fact respondent's watch cases so described or designated contain no gold whatsoever.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 respondent's watches.

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, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint (including supplemental testimony, taken

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pursuant to order of the Commission of February 23, 1943, on the question of possible deception in the use of the term "yellow gold effect") taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; 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, Earl Hall, an individual trading as United Watch Co., and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of watches and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any watch is an Elgin watch which is not manufactured by the Elgin Watch Co.

2. Using the term "Elgin" in such a way as to represent either directly or by implication that respondent's watches are Elgin watches when such watches are not in fact manufactured by the Elgin Watch Co.

3. Using the term "Locomotive Special" or any other term of similar import or meaning to designate or describe a watch which is not a railroad watch possessing the accuracy and dependability required for use by railroad employees.

4. Representing that respondent's watches are shockproof unless the movement of said watches are of special shockproof design and construction.

5. Representing that any watch is sold exclusively by the respondent when watches of the same quality, design, and construction are sold by other dealers in watches.

6. Using the term "yellow gold effect" or "gold effect" or any other term of similar import or meaning to designate or describe watch cases or other items of jewelry which are not made in whole or in part of gold.

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.

Order

IN THE MATTER OF

BLUE RIBBON HATCHERIES CORPORATION TRADING AS
BOCKENSTETTE'S BLUE RIBBON FARMS

MODIFIED CEASE AND DESIST ORDER

Docket 4537. Order, March 27, 1946

Modified order in proceeding in question—in which original order issued on May 11, 1942, 34 F. T. C. 1193—*making the prohibitions of said order* requiring respondents, in connection with offering of chicks or chickens, to cease representing that they are R. O. P. poultry breeders or that they operate a poultry plant under the supervision of an official from the agency supervising U. S. Record of Performance Work, etc., as below set forth, subject to the provision that the order shall not be construed as prohibiting representations that respondents' baby chicks are R. O. P. sired when such chicks have actually been sired by males officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such; or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R. O. P. males when such flocks are segregated and headed by officially banded R. O. P. males: *Provided, however*, That such representations are not so made as to represent directly or by implication that the baby chicks so offered for sale are U. S. R. O. P. chicks, or that the respondents are participants in the National Poultry Improvement Plan.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wheeler, Brewster, Hunt & Goodell, of Topeka, Kans., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on May 11, 1942, the Commission made its findings as to the facts herein and concluded therefrom that the substituted respondents J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, had violated the provisions of the Federal Trade Commission Act, and on May 11, 1942, issued and subsequently served its order to cease and desist upon said substituted respondents, J. A. Bockenstette and Rose M. Bockenstette.

Thereafter, on July 10, 1942, respondents filed their petition to review and set aside the order to cease and desist in the United States Court of Appeals for the Tenth Circuit. On March 30, 1943, said court entered its final decree affirming and enforcing the said order to cease and desist.