

Syllabus

IN THE MATTER OF

M. B. WATERMAN AND COMPANY 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 5426. Complaint, Mar. 12, 1946—Decision, Oct. 7, 1949*

Where an individual engaged in the interstate sale and distribution of crucifixes crosses, religious medals, "glowlights", ladies' and men's jackets and various other articles; in advertising his said products through circulars and in newspapers, comic books, magazines and other periodicals of general circulation—

- (a) Represented directly and by implication that his crucifixes were hand carved of wood and that the images on certain of them would glow all during the night; when in fact they were machine made of paper pulp, sawdust and glue; and the images advertised to glow by night were coated with some undisclosed material, which, if exposed to strong light, would glow faintly for possibly thirty minutes but would not glow again until again exposed to light;
- (b) Represented that his "glowlights" could be used to spot objects and give signals in the dark, that they would make excellent night lights, and that they were made of metal or leather frames, with leather or composition handles; the facts being that the section of the article which corresponded to a bulb and lens of a flashlight was coated with a phosphorus material and, if exposed to a bright light, would give off a faint glow for a few minutes, but would not throw a beam of light or give a light enabling one to spot objects or give signals in the dark; and it was not made, as represented by the advertising depictions, of metal, leather or composition, but entirely of cardboard;
- (c) Represented that his crosses, which he referred to as "Replica Virginia Lucky Stones" were curios formed by nature and found in the mountains of Virginia; when in fact they were not even very good imitations of the original Virginia Fairy Stones, but were merely plastic crosses formed in the same general shape as said stones;
- (d) Falsely represented that his St. Christopher's medals, which were merely gold washed, were 10 K. gold filled; and that his jackets were tailored and styled in California or by a California manufacturer or designer; and, through use of the trade name Bernard's of California, that he was operating in and had a place of business in said State; and
- (e) Represented that certain articles of merchandise were given free as a gift or gratuity and without cost to the recipient; when in fact in some cases the cost was included in the price of other articles, the purchase of which he required before one could receive the so-called gift, in other cases he gave the "free" articles only to those who had rendered certain services in connection

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with the sale of products, and in either case he made a profit on the entire transaction;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause it to purchase substantial quantities of his 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.

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

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

Mr. Charles L. Schwartz, of Chicago, Ill., for respondents.

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 M. B. Waterman & Co., a corporation, Max B. Waterman, Dorothea Waterman, and Julius W. Kohn, individually and as officers of M. B. Waterman & Co., a corporation and trading as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Co., Pardon Cross Co., Bernard's of California, Nature's Wonder, Glo-Sheen Flowers and Glo-Sheen's Flowers 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. Respondent M. B. Waterman & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 333 South Market Street, Chicago, Ill.; respondents Max B. Waterman, Dorothea Waterman, and Julius W. Kohn are officers and directors of respondent corporation M. B. Waterman & Co. Said individual respondents dominate and control the advertising policies and business activities of the corporate respondents. All of respondents cooperate and have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged.

Respondents Max B. Waterman, Dorothea Waterman, and Julius W. Kohn, through said corporate respondent and as individuals, are also trading and doing business as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Co., Pardon Cross Co., Bernard's of California, Nature's Wonder, Glo-Sheen Flowers and Glo-Sheen's Flowers Co., with their principal office and place of business located at 333 South Market Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than 1 year last past have been engaged in the distribution and sale of various articles of merchandise, including crucifixes, statues, artificial flowers, and novelties. Respondents cause and have caused their said products when sold to be transported from their said place of business located in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States other than Illinois, and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained a course of trade in their said products in commerce between and among the various States of the United States and in 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 said merchandise respondents have circulated and are now circulating among prospective purchasers throughout the United States through circulars distributed among prospective purchasers, and through advertisement in newspapers, magazines, and other periodicals having a general circulation, false, misleading, and deceptive statements and representations concerning their merchandise and the nature of their business. Among and typical of such false, deceptive and misleading statements and misrepresentations disseminated as aforesaid are the following:

Your
LAST CHANCE
Before
Christmas
to receive
our newest creation
HAND CARVED
CRUCIFIX

(Picture of Crucifix)

This reproduction is the most Beautiful and most imposing crucifix ever designed. Originally carved, by Hand, in wood, this Burrco Wood Crucifix carries all the true atmosphere and religious appeal of the ideal of the master artist who created it.

This crucifix is 11 inches in height, beautifully detailed in its carvings.

Two Big Surprise Gifts Free for Acting Promptly—Ideal Gift—Offer Limited.

ACT AT ONCE

FREE at no cost to you—
Reproduction of our Hand Carved Crucifix 11" HIGH

(Picture of Crucifix)

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This magnificent reproduction is made of Burrco wood 11" high. BEAUTIFULLY detailed in CARVED STYLE. The cross is of rich walnut finish. The image, as well as the halo, are in antique ivory by day—by night, the image GLEAMS A LAVENDER GLOW. This is Your Registry Number—No. 12002. THE IMAGE GLEAMS A LAVENDAR GLOW BY NIGHT.

HOW TO RECEIVE THIS BEAUTIFUL GLOWING CRUCIFIX

All you need to do to receive this BEAUTIFUL REPRODUCTION of our HAND CARVED GLOWING CRUCIFIX is to pass out the attached coupons to your friends. If only THREE reach us, you will immediately be eligible to receive YOUR GLOWING CRUCIFIX—ABSOLUTELY FREE which will be sent to you AT ONCE.

Enclose \$1.69 for one; or \$3.10 for two, in money order or check with this coupon and you will receive our FREE GIFTS and REPRODUCTION of our HAND CARVED GLOWING CRUCIFIX, ALL PREPAID.

For Every Real American Boy and Girl

Mothers And Dads
The American Ranger
Glowlight Makes A
Fine Emergency Night Light

Educational And Easy To Please

No Batteries
No Bulbs
Works by Mystery Glow
Free Morse Code

And Semaphore Alphabet Chart
With Each Glowlight "Spot"

American Ranger GLOWLIGHT

Here it is boys and girls. A PATENTED AMERICAN RANGER GLOWLIGHT that works without BULBS or BATTERIES. IT GLOWS IN THE DARK and you can SPOT DIFFERENT OBJECTS. You can give SEMAPHORE and MORSE CODE SIGNALS in the dark and have lots of fun. It takes but a few minutes to assemble and it also makes an excellent emergency night light. Complete instructions with each GLOWLIGHT.

(Said advertisement has a picture of the said Glowlight which resembles a very high grade flashlight container and has the appearance of metal and composition covering found on certain flashlights, and along with some of the claims it shows a picture of a small boy casting a strong light on a good-sized dog some feet away from him; a picture which illustrates that signals can be made in the dark with the said Glowlight; a picture of a small boy utilizing the Glowlight to outline a young girl some feet away from him; and another picture of three young boys in uniform of the various armed forces with Glowlight in their hands, which appear to be emitting a very strong beam of light).

NEW! GENUINE PLASTIC PARDON CRUCIFIX THAT GLOWS in the DARK.

FREE PARDON CROSS * * * complete with * * * indulgence leaflet

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Complete—a Pocket Crucifix with Indulgence Leaflet.

(The Indulgence Leaflet contains the following statement:)

You have received free five genuine 10 Karet gold plated medals with your St. Christopher Shrine

New!

ST. CHRISTOPHER MEDAL FOR POCKET OR CHAIN

Genuine 10 Kt. Gold Plated

QUANTITY LIMITED—ORDER NOW

ROSARIES Only \$1.49

LAST CHANCE TO OBTAIN BEAUTIFUL CRYSTAL CUT OVAL, ODD SHAPE

* * *

FAMOUS REPLICA
VIRGINIA LUCKYSTONE

Now a Genuine Plastic Replica of THE VIRGINIA LUCKYSTONE is available to YOU

It is a reproduction of a real curio fashioned by nature in a rare moment.

* * *

ITS THAT NEW CASUAL CALIFORNIAN Saddle Stitched

ALL PURPOSE JACKET
QUANTITIES LIMITED
STYLED BY
BERNARD
OF CALIFORNIA

* * *

An all interwoven spun enchanting soft-as-down to feel, tailored Jacket for you to allure Romance, Select yours from the season's newest shades. Camel Tans or Stop Red. Size 12 to 20 QUANTITIES LIMITED.

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar thereto not specifically set out herein, respondents have represented directly and by implication that their said crucifixes are hand carved from wood; that their crucifixes are reproductions of an original hand-carved crucifix; that respondents' crucifixes will glow all during the night; that certain articles are given free as a gift or gratuity and without cost; that respondents' offer of articles as being free is limited as to time; that respondents' Glowlight will spot objects in the dark, makes an excellent night light and that it is possible to use said Glowlight for the giving of signals in the dark; that respondents' Glowlight is made of a leather

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Concerning his religious medals:

New!

ST. CHRISTOPHER MEDAL FOR POCKET OR CHAIN

Genuine 10 Kt. Gold Plated

(Admitted in answer)

Concerning his "glowlights":

FOR EVERY REAL AMERICAN BOY AND GIRL!
MOTHERS AND DADS
The American Ranger
Glowlight Makes A
Fine Emergency
Night Light

Educational and easy to Build

No Batteries

No Bulbs

Works by

MYSTERY GLOW

FREE Morse Code

and Semaphore Alphabet Chart

With Each Glowlight

American Ranger GLOWLIGHT

Here it is Boys and Girls. A PATENTED AMERICAN RANGER GLOWLIGHT that works without BULBS OR BATTERIES. It GLOWS IN THE DARK and you can SPOT different objects. * * * You can give SEMAPHORE and MORSE CODE SIGNALS in the dark and have lots of fun. It takes but a few minutes to assemble and it also makes an excellent emergency night light. Complete instructions with each glowlight.

(Said advertisement has a picture of the said Glowlight which resembles a very high grade flashlight container and has the appearance of metal and composition covering found on certain flashlights, and along with some of the claims it shows a picture of a small boy casting a strong light on a good sized dog some feet away from him; a picture which illustrates that signals can be made in the dark with the said Glowlight; a picture of a small boy utilizing the Glowlight to outline a young girl some feet away from him; and another picture of three young boys in uniform of the various armed forces with Glowlights in their hands, which appear to be emitting a very strong beam of light.)

(Comm. Ex. 19)

Concerning his jackets:

ITS THAT NEW CASUAL CALIFORNIAN Saddle Stitched ALL PURPOSE JACKET

* * * * *

QUANTITIES LIMITED

STYLED BY BERNARD OF CALIFORNIA * * *

(Comm. Ex. 26)

PAR. 4. Through the use of such statements and representations, said respondent has represented, directly and by implication, that his crucifixes are hand-carved of wood, and that the images on certain of said crucifixes will glow all during the night; that his "glowlights" can be used to spot objects and give signals in the dark, that they will make excellent night lights, and that said glowlights are made of metal or leather frames and with leather or composition handles; that his crosses referred to as "Replica Virginia Lucky Stones" are curios, formed by nature and found in the mountains of Virginia; that his St. Christopher's medals are 10-kt. gold-plated; that his jackets were tailored and styled in California or by a California manufacturer or designer; and that certain articles of merchandise are given free as a gift or gratuity and without cost to the recipients.

Through the use of the trade name "Bernard's of California," the respondent has represented that he was operating in and had a place of business in the State of California.

PAR. 5. Contrary to the aforesaid representations, the respondent's crucifixes are not hand carved and are not made of wood, but are machine manufactured through the use of metal dies or forms and are made of paper pulp, sawdust, and glue. The images on the crucifixes advertised to gleam a lavender glow by night are coated with some kind of material, the nature of which was not disclosed, and if exposed to strong natural or artificial light will glow faintly, for possibly 30 minutes thereafter, but they will not glow again until and unless they are reactivated by again being exposed to light.

The section of the respondent's "glowlight" corresponding to the bulb and lens of a flashlight is coated with a phosphorous material which, if exposed to a bright light, will give off a faint glow for a few minutes, and said "glowlight," even after being exposed to light, will not throw a beam of light or give a light enabling one to spot objects or give signals in the dark. Said "glowlight" is not made of metal, leather, or composition, as represented by the picturizations appearing in the respondent's advertising, but is made entirely of cardboard.

The respondent's "Replica Virginia Lucky Stones" are not the original Virginia Fairy Stones, and are not even very good imitations thereof, but are merely plastic crosses formed in the same general shape as said Virginia Fairy Stones.

The respondent's St. Christopher medals are not 10-kt. gold-filled, as the respondent represented but are merely gold washed.

The jackets sold by the respondent are not made or styled in California, or by a California manufacturer or designer; and the re-

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spondent himself has never operated in or had a place of business in the State of California.

The articles represented by the respondent as being "free" or as gifts are not in fact given free or as a gratuity or without consideration. In some cases the cost of said articles is included in the price of other articles the purchase of which the respondent requires before one can receive the so-called gifts, and in other cases the articles designated as "free" are given only after those who would receive them have rendered to the respondent certain services in connection with the sale of his products. In either case the respondent makes a profit on the entire transaction after taking into consideration the cost of the article or articles delivered to the purchaser or the person performing the services.

For the foregoing reasons, and in the particulars stated, the respondent's advertising representations set forth in paragraph 3 were false, misleading and deceptive.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the respondent's products because of the erroneous and mistaken belief so engendered.

CONCLUSION

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

Commissioner Davis absent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, an answer thereto filed by the respondent, Max B. Waterman, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclu-

sion that the respondent, Max B. Waterman, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Max B. Waterman, individually, and trading as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Company, Pardon Cross Co., Bernard's of California, and Nature's Wonder, or trading under any other name or through any corporate or other device, and said respondent's agents, representatives and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of crucifixes, crosses, religious medals, "glowlights," jackets, and other articles of merchandise, do forthwith cease and desist from:

(1) Representing, directly or by implication, that crucifixes or other articles not carved by hand are hand-carved, or that any articles made of substance other than wood is made of wood.

(2) Representing, directly or by implication, that any crucifix, or any part thereof, or any other article, which will glow for only a short period of time after exposure to light will gleam or glow all during the night or for any extended period of time.

(3) Representing, by picturization or otherwise, that cardboard "glowlights" or other cardboard articles are made of metal, leather, imitation leather, composition, or any material other than cardboard, or representing, directly or by implication that the respondent's "glowlights," by whatever name designated, will throw a beam of light or give any light, except a faint glow for a limited time after exposure to a bright light.

(4) Representing, directly or by implication, that crosses manufactured of plastic, or of any other material, are "Famous Replica Virginia Lucky Stones" or that they are real curios fashioned by nature, or using any language concerning said crosses which would imply that they are Virginia Fairy Stones.

(5) Representing, directly or by implication, that religious medals or other articles which have been merely gold washed are gold plated.

(6) Representing, contrary to the facts, that the respondent's jackets or other wearing apparel has been made or styled in California.

(7) Using the name "Bernard's of California," or any other trade name, to indicate that the respondent or his business is located in California, when such is not the fact.

(8) Using the term "free," or any other term of similar import, in advertising, to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity, or which is not given without requiring the purchase of other merchandise or the performance of

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some service inuring directly or indirectly to the benefit of the respondent.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents M. B. Waterman & Co., a corporation, Dorothea Waterman, and Julius W. Kohn.

It is further ordered, That the respondent, Max B. Waterman, 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.

Commissioner Davis absent.

Order

IN THE MATTER OF

G. S. BLAKESLEE & CO.

MODIFIED CEASE AND DESIST ORDER

Docket 4678. Order, November 1, 1949

Modified order in proceeding in question, in which original order issued on December 30, 1948, 45 F. T. C. 418, requiring respondent, its officers, etc., in connection with the offer, etc., in commerce, of its synthetic degreasing solvents, to cease and desist from misrepresenting in any manner the constituents, properties, etc., of "Kolene T," or of any other degreasing solvent sold in competition with respondent's product, etc., as in said order below set out.

Mr. John R. Phillips, Jr., for the Commission.

D'Ancona, Pflaum, Wyatt & Riskind, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, and a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure except the filing of briefs and the presentation of oral argument (the filing of briefs and the presentation of oral argument having been subsequently waived), the Commission may issue and serve upon the respondent its findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on December 30, 1948, issued and on January 13, 1949, served upon the respondent its order to cease and desist. Thereafter, this matter again came on for hearing before the Commission upon a motion, filed by the respondent, requesting that the aforesaid order to cease and desist be modified, the answer to such motion, filed by counsel opposing the same, and the respondent's reply thereto; and the Commission having considered said motion, answer, and reply, and the record herein, and being of the opinion that its order to cease and desist issued December 30, 1948, should be modified: