

Complaint

IN THE MATTER OF

WILL-WELD MANUFACTURING COMPANY ET AL.

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

Docket 5922. Complaint, Sept. 11, 1951—Decision, Mar. 13, 1952

Where a corporation and its three officers, engaged in the interstate sale and distribution of unassembled electric home welding machines; in advertising the same through magazines and circulars—

Represented that their said machine, made by assembling the various parts, would operate consistently and safely on the electric circuit ordinarily found in a home, on a 30 ampere fuse, use of which they recommended;

The facts being that their said machine could not be used safely in a home: the electric circuit in most homes is wired with No. 14 American wire gauge wire, which necessitates use of 15 ampere fuses; and use of their said machine with a 30 ampere fuse, which requires a No. 10 wire, on a No. 14 wire would cause overloading until the circuit breaker or fuse opened and result in overheating and a dangerous fire hazard, danger of which they failed to reveal or caution the public against;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their assembled machine would operate safely on the ordinary home lighting circuit, and thereby induce purchase of said parts and the assembling and use of said machines in homes:

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. Webster Ballinger*, hearing examiner.

Mr. John W. Russell 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 Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman, and L. B. Bush, individually and as officers of said corporation, 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 Will-Weld Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, having its office and prin-

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principal place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. Said corporation trades and does business under the name of Atomic Arc Welder Company.

Respondents W. O. Schneiderwind, W. J. Dillman and L. B. Bush are President, Vice-President and Secretary-Treasurer, respectively, of corporate respondent and also have their principal office and place of business at 1038 South 19th Street in the city of Omaha, in the State of Nebraska. The individual respondents formulate, direct and control the acts and practices of corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of unassembled electric home welding machines.

PAR. 3. Respondents cause, and have caused, the unassembled parts of said welding machines to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said unassembled machines in commerce among and between the various States of the United States. Their volume of trade in said commerce is and has been substantial.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product in commerce, respondents have made certain statements and representations concerning the welding machines assembled from the parts sold by them by means of advertisements inserted in magazines and in circulars sent to members of the purchasing public. Among and typical of the statements and representations contained in said advertisements and circulars are the following:

Profit or pleasure in your home or work shop

Gives 100% penetration. Welds are stronger than original metal. Operates on 110 or 220 A. C.

Your Atomic Arc Welder will operate on either 110 or 220 alternating current, 50 or 60 cycle. On 110 or 220 volts you can use $\frac{1}{8}$ " electrodes and weld $\frac{1}{4}$ " plate in one pass.

The Atomic Arc Welder gives the maximum amount of heat practical on the ordinary 110 volt lighting circuit.

The Atomic Arc Welder is a transformer type Arc Welder. Not a Resistance type welder. Safe, rugged, compact and portable.

IN YOUR HOME OR WORKSHOP

The ATOMIC ARC WELDER

is . . . Safe . . . can be used
consistently on 30 ampere fuse.

PAR. 5. Through the use of the aforesaid statements and representations and others of the same import not specifically set out herein,

respondents represented that the welding machine assembled by the use of the various parts sold by them will operate safely in the home on the electrical circuit ordinarily found in the home.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. Most homes operate on a 110 volt lighting circuit, are wired with No. 14 gauge wire and use 15 ampere fuse plugs. Respondents recommend the use of 30 ampere fuse plugs. The operation of their welding machine upon such a circuit and using 30 ampere fuse plugs is not safe as a definite fire hazard will result.

PAR. 7. At no place in respondents' advertising or elsewhere is the fact revealed that a dangerous fire hazard will result from operating their said machine on the ordinary home lighting circuit fused as recommended. Furthermore, respondents do not inform purchasers of the proper wiring and fusing necessary to safely operate said machine in the home. By failing to reveal these facts respondents impliedly represent, contrary to the facts, that the use of said machine in the home is safe under all conditions of ordinary use.

PAR. 8. The use by the respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true and that their assembled machine will operate safely on the ordinary home lighting circuit and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said unassembled parts and to assemble and use said welding machines in their homes.

PAR. 9. The aforesaid acts and practices of 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 intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 13, 1952, the initial decision in the instant matter of Hearing Examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 11, 1951, issued and

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subsequently served its complaint in this proceeding upon respondents Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman and L. B. Bush, individually and as officers of said corporation, charging them and each of them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The corporate respondent answered, no answer being filed by any of the individual respondents, and, after seasonable notice, hearing was held, at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, which said evidence was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, all intervening procedure before the examiner being waived; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Will-Weld Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, having its office and principal place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. Said corporation trades and does business under the name of Atomic Arc Welder Company.

Respondents W. O. Schneiderwind, W. J. Dillman and L. B. Bush are President, Vice-President and Secretary-Treasurer, respectively, of the corporate respondent and also have their principal office and place of business at 1038 South 19th Street in the city of Omaha, State of Nebraska. The individual respondents formulate, direct and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of unassembled electric home welding machines.

PAR. 3. Respondents cause, and have caused, the unassembled parts of said welding machines to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said unassembled machines in commerce among and between the various States of the

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United States. Their volume of trade in said commerce is, and has been, substantial.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product in commerce, respondents, by means of advertisements inserted in magazines and circulars sent to members of the purchasing public, represented that their electric home welding machine, made by the assembling of the various parts sold by them for a complete welding machine, would operate consistently and safely on the electric circuit ordinarily found in a home, on a 30 ampere fuse, the use of which they recommend.

PAR. 5. The electric circuit found in most homes is wired with No. 14 American wire gauge wire which provides 115 to 120 volts and necessitates the use of 15 ampere fuse plugs.

PAR. 6. A 30 ampere fuse requires a No. 10 American wire gauge wire. The use of respondents' welding machine with a 30 ampere fuse on a No. 14 American wire gauge wire (the numbering system used on wiring runs in reverse), will cause an overloading of the circuit until the circuit breaker or fuse opens, resulting in overheating and producing a dangerous fire hazard. Respondents do not reveal to or caution the public against this danger but, on the contrary, represent to the public that their welding machine can be safely used in homes.

PAR. 7. The use by the respondents of the statements and representations referred to in Paragraph Four has had and now has 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 are true and that their assembled machine will operate safely on the ordinary home lighting circuit and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said unassembled parts and to assemble and use said welding machines in their homes.

CONCLUSION

The acts and practices of respondents, as set forth in the findings, 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

It is ordered, That the respondents Will-Weld Manufacturing Company, a corporation, and W. O. Schneiderwind, W. J. Dillman and L. B. Bush, individually and as officers of the corporate re-

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spondent, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of unassembled electric home welding machines, by that or any other name or designation, do forthwith cease and desist from:

(1) Representing, directly or indirectly, that their electric home welding machine, made by the assembling of the various parts sold by them for a complete machine, will operate consistently and safely on the electric circuit ordinarily found in a home with a 30 ampere fuse.

(2) Selling or offering for sale their electric home welding machine without, in large type appearing in all literature relating thereto, expressly informing the purchaser or purchasers that their home welding machine cannot be safely connected with the electric current ordinarily found in a home by an ampere fuse in excess of 15 amperes and that the use of a larger fuse may cause an overloading of the electric circuit and produce a dangerous fire-hazard condition.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of March 13, 1952].

Complaint

IN THE MATTER OF
BULOVA WATCH COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5830. Complaint, Dec. 1, 1950—Decision, Mar. 17, 1952

Under the provisions of subsec. (d) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act, the seller has the free choice whether to contract to pay allowances to or for the benefit of its customers in consideration of services or facilities furnished by such customer in connection with the resale of products purchased, and has the further free choice as to the basis upon which such payments will be made, but if decision to pay such allowances has been made, the statute enjoins the seller to make such payments available on proportionally equal terms to all customers competing in the resale of the seller's products.

Where a corporate manufacturer of men's and women's watches which in 1948 sold about \$48,000,000 worth to single retail jewelry stores, chain jewelry stores, and department stores, competing with one another—

Paid or contracted to pay money to customers as compensation for advertising services furnished by them in connection with the sale or offering for sale of its watches without making such payments available on proportionally equal terms to all in that competing customers, received varying percentages on their respective purchase volume due to the varying percentages allowed for the different purchase brackets:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (d) of Sec. 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William H. Smith and *Mr. Peter J. Dias* for the Commission.

Cravath, Swaine & Moore, of New York City, and *Clifford & Miller*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Bulova Watch Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.