

Complaint

48 F. T. C.

IN THE MATTER OF
ELGIN NATIONAL WATCH COMPANY

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 5837. Complaint, Jan. 4, 1951—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 of making payments for advertising services furnished by customers in connection with the sale or offer of the seller's products, or not making such payments, and the further choice as to the basis on which any of such payments shall be made, subject simply to the statutory requirement that such payment if made shall be available on proportionally equal terms to all customers who compete in the distribution of such products.

Where a corporation which was engaged in the manufacture and interstate sale of men's and women's watches to some 15,000 customers throughout the United States, which included single retail jewelry stores, chain retail jewelry stores, mail order houses and premium houses, in competition with each other in the resale of its said watches to consumers;

Paid or contracted to pay money to some of its customers as compensation for advertising services furnished by them in connection with the sale or offer of its watches without making such payments available on proportionally equal terms to all competing customers in that, no advertising allowance was available to customers classified in the smallest annual purchase volume bracket, and customers in all of the other volume brackets had available to them greater percentage allowances on their respective purchase volumes than were available to customers in the next lower bracket:

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.

Gardner, Carton & Douglas, of Chicago, Ill., 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 Elgin National Watch Company, is a corporation organized, existing and doing business under and by vir-

tue of the laws of the State of Illinois, with its office and principal place of business located at Elgin, Illinois.

PAR. 2. Respondent is now, and for many years has been engaged in the business of manufacturing and selling men's and women's watches, and has come to occupy an important position in that industry. It manufactures said watches in plants located in Illinois and Nebraska and sells them to approximately 15,000 customers with places of business located throughout the several States of the United States and in the District of Columbia for resale within the United States to consumers. Said customers are single-unit retail jewelry stores, multiple-unit or chain retail jewelry stores, mail order houses and premium houses.

PAR. 3. In the course and conduct of said business, respondent engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, having shipped said watches, or caused them to be transported, from said States in which its said plants are located to said purchasers with places of business located in the same and in other States and in the District of Columbia.

PAR. 4. In the course of its said business in commerce respondent paid, or contracted to make payments to or for the benefit of some of its customers as compensation and in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers, in connection with the sale, or offering for sale, of respondent's watches which it manufactures, and offers for sale; and respondent did not make, or contract to make, such payments available on proportionally equal terms to all other of its customers competing in the distribution of respondent's said products.

PAR. 5. Among the payments alleged in Paragraph Four were those for advertising services or facilities, or advertising allowances. Said advertising allowances were available from respondent, and respondent paid or contracted to pay them, upon the following proportionally unequal terms:

Respondent classified its customers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of net purchases of respondent's watches during a specified twelve-month period. Each of said groups consisted of those customers having volumes within the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes.

No advertising allowance was available to those customers in the first or smallest volume bracket.

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To those customers in the second volume bracket advertising allowances were available, which amounted to the same percentage or an equal proportion of their respective volumes.

To those customers in all of the other volume brackets, advertising allowances were available which amounted to greater percentages or proportions of their respective volumes than the percentage or proportion which was available, as aforesaid, to customers in the second volume bracket, and which, as between and among said customers in said larger volume brackets purchasing different volumes, amounted to different percentages or unequal proportions of their respective volumes for the reason that the larger the volume the greater the percentage or proportion of volume which was available.

The greatest percentage or proportion of volume which was thus available to the customer or customers with the largest volume in said larger volume brackets was not available to competing customers with smaller volumes in said larger volume brackets or in the second and first volume brackets and the same was true with regard to each successively smaller percentage or proportion available in said larger volume brackets. The percentage or proportion which was available to all customers in the second volume bracket was not available to customers in the first volume bracket.

Said advertising allowances were available as aforesaid to the extent that customers had made expenditures but not in excess of the proportion of volume offered by respondent and provided said advertising services were furnished through the media and in the manner specified by respondent.

PAR. 6. The said volume brackets and percentages or proportions of volume which respondent made available to its customers in July 1946 and which are still in effect, are shown in columns (1) and (2) respectively of the table herein set forth. As illustrative of the operating results of respondent's said advertising allowance program there are set forth below, for the fiscal year ending June 30, 1948, in column (3) the approximate number of customers in the various brackets, and in column (4) the approximate total dollar amount of said advertising allowances paid to all of the customers in each of said volume brackets and the approximate total dollar amount of said advertising allowance paid to all of the customers in all of said volume brackets:

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(1) Volume Brackets		(2) Percentages			(3) Number of Customers	(4) Allowances
Over	But Not Over	Lump Sum of	Plus Fol- lowing Percent	Of Pur- chases in excess of		
0	\$1,500	0	0	0	14,300	0
\$1,500	2,500	0	3	\$1,500	71	\$1,256.08
2,500	3,500	\$30	4	2,500	107	4,902.77
3,500	5,000	70	5	3,500	121	11,985.31
5,000	6,500	145	6	5,000	88	15,383.44
6,500	8,000	235	7	6,500	57	15,355.85
8,000	10,000	340	8	8,000	50	18,511.12
10,000	15,000	500	9	10,000	52	29,877.27
15,000	20,000	950	10	15,000	41	41,279.34
20,000	30,000	1,450	11	20,000	33	58,571.79
30,000	40,000	2,550	12	30,000	19	50,683.53
40,000	50,000	3,750	13	40,000	9	34,134.20
50,000	60,000	5,050	14	50,000	7	40,446.02
60,000	70,000	6,450	15	60,000	3	18,826.86
70,000	85,000	7,950	16	70,000	3	23,638.58
85,000	100,000	10,350	17	85,000	1	940.70
100,000	125,000	12,500	18	100,000	3	39,131.08
125,000	150,000	17,400	19	125,000	0	0
150,000	-----	22,150	20	150,000	3	107,031.61
					14,938	511,955.55

The above table includes approximately all of respondent's customers during said year and many of said customers purchasing different volumes and receiving different or no percentages or proportions of volume as advertising allowances, were in competition with each other in the sale of respondent's watches to consumers.

PAR. 7. The acts and practices of the respondent as above alleged violate subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on January 4, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, Elgin National Watch Company, a corporation, charging said respondent with having violated the provisions of subsection (d) of section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of the respondent's answer thereto, the respondent, pursuant to leave granted by the hearing examiner of

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the Commission designated in the complaint, withdrew its original answer and filed an amended answer to the complaint, in which answer the respondent, for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the complaint, waived all hearings as to said facts, and consented to the entry of findings as to the facts and the issuance against it of an order to cease and desist based upon the complaint and said amended answer, upon the condition, however, that no order to cease and desist should be issued or served upon it until the entry of orders disposing of pending complaints against Bulova Watch Company, Inc., Federal Trade Commission Docket No. 5830, and the Gruen Watch Company, Federal Trade Commission Docket No. 5836; and, on May 25, 1951, the hearing examiner filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, the respondent filed with the Commission an appeal from said initial decision; and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including the respondent's brief in support of its appeal and the brief in opposition thereto, filed by counsel in support of the complaint (oral argument not having been requested); and the Commission, having issued its order sustaining in part and denying in part the respondent's appeal, and being now fully advised in the premises, makes the following findings as to the facts, conclusion drawn therefrom and order, the same to be in lieu of the findings as to the facts, conclusion and order included in the initial decision of the hearing examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Elgin National Watch Company 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 Elgin, Illinois.

PAR. 2. Respondent is now, and for many years has been, engaged in the business of manufacturing and selling men's and women's watches, and has come to occupy an important position in that industry. It manufactures its watches in plants located in Illinois and Nebraska and sells them to approximately 15,000 customers with places of business located throughout the several States of the United States and in the District of Columbia for resale within the United States to consumers. Said customers are single-unit retail jewelry stores, multiple-unit or chain retail jewelry stores, mail order houses and premium houses.

PAR. 3. In the course and conduct of its business as aforesaid, and during all of the time mentioned herein, respondent has engaged in

commerce, as "commerce" is defined in the Clayton Act, having shipped its watches, or caused them to be transported, from the States in which its plants are located to the purchasers thereof with places of business located in the same and in other States and in the District of Columbia.

PAR. 4. In the course of its said business in commerce, respondent has paid or contracted to pay money to some of its customers as compensation and in consideration for advertising services furnished by such customers in connection with the sale or offering for sale of watches manufactured and sold by respondent in accordance with the advertising allowance plan set out in Paragraphs Five and Six of these Findings as to the Facts. Such plan did not make or support to make such payments available on proportionally equal terms to all of respondent's customers competing in the distribution of its said products.

PAR. 5. Said advertising allowances were available from respondent, and respondent paid or contracted to pay them, upon the following proportionally unequal terms:

Respondent classified its customers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of net purchases of respondent's watches during a specified twelve-month period. Each of said groups consisted of those customers having volumes within the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes.

No advertising allowance was available to those customers in the first or smallest volume bracket.

To those customers in the second volume bracket, advertising allowances were available, which amounted to the same percentage or an equal proportion of their respective volumes.

To those customers in all of the other volume brackets, advertising allowances were available which amounted to greater percentages or proportions of their respective volumes than the percentage or proportion which was available, as aforesaid, to customers in the second volume bracket, and which, as between and among said customers in said large volume brackets purchasing different volumes, amounted to different percentages or unequal proportions of their respective volumes for the reason that the larger the volume the greater the percentage or proportion of volume which was available.

The greatest percentage or proportion of volume which was thus available to the customer or customers with the largest volume in said larger volume brackets was not available to competing customers with smaller volumes in said larger volume brackets or in the second and first volume brackets and the same was true with regard to each successively smaller percentage or proportion available in said larger

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volume brackets. The percentage or proportion which was available to all customers in the second volume bracket was not available to customers in the first volume bracket.

Said advertising allowances were available as aforesaid to the extent that customers had made expenditures but not in excess of the proportion of volume offered by respondent and provided said advertising services were furnished through the media and in the manner specified by respondent.

PAR. 6. The said volume brackets and percentages or proportions of volume which respondent made available to its customers in July, 1946 are shown in columns (1) and (2) respectively of the table herein set forth. As illustrative of the operating results of respondent's said advertising allowance program there are set forth below, for the fiscal year ending June 30, 1948, in column (3) the approximate number of customers in the various brackets, and in column (4) the approximate total dollar amount of said advertising allowances paid to all of the customers in each of said volume brackets and the approximate total dollar amount of said advertising allowances paid to all of the customers in all of said volume brackets:

(1) Volume Brackets		(2) Percentages			(3) Number of Customers	(4) Allowances
Over	But Not Over	Lump Sum of	Plus Fol- lowing Percent	Of Pur- chases in excess of		
0	\$1,500	0	0	0	14,300	0
\$1,500	2,500	0	3	\$1,500	71	\$1,256.08
2,500	3,500	\$30	4	2,500	107	4,902.77
3,500	5,000	70	5	3,500	121	11,985.31
5,000	6,500	145	6	5,000	88	15,383.44
6,500	8,000	235	7	6,500	57	15,355.85
8,000	10,000	340	8	8,000	50	18,511.12
10,000	15,000	500	9	10,000	52	29,877.27
15,000	20,000	950	10	15,000	41	41,279.34
20,000	30,000	1,450	11	20,000	33	58,571.79
30,000	40,000	2,550	12	30,000	19	50,683.13
40,000	50,000	3,750	13	40,000	9	34,134.20
50,000	60,000	5,050	14	50,000	7	40,446.02
60,000	70,000	6,450	15	60,000	3	18,826.86
70,000	85,000	7,950	16	70,000	3	23,638.58
85,000	100,000	10,350	17	85,000	1	940.70
100,000	125,000	12,900	18	100,000	3	39,131.08
125,000	150,000	17,400	19	125,000	0	0
150,000	-----	22,150	20	150,000	3	107,031.61
-----	-----	-----	-----	-----	14,568	511,955.55

The above table includes approximately all of respondent's customers during said year and many of said customers purchasing different volumes and receiving different or no percentages or propor-

tions of volume as advertising allowances were in competition with each other in the sale of respondent's watches to consumers.

CONCLUSIONS

1. Subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, gives the respondent the free choice of making payments for advertising services furnished by customers in connection with the sale or offering for sale of products manufactured or sold by the respondent or of not making such payments, and the further choice of the basis on which any such payments shall be made. The statute simply requires that such payments, if made, shall be available on proportionally equal terms to all customers competing in the distribution of such products.

2. Respondent, as a matter of business policy, determined to make such payments and selected as a basis therefore the annual dollar volume of purchases by each customer and classified its customers accordingly.

3. In making payments on this basis respondent has, however, ignored the injunction of the statute on the facts admitted and found in this proceeding in two particulars: First, payments were not made available by respondent to all of its customers competing in the sale of its products—those purchasing less than \$1,500 annually who were in competition with those purchasing more than \$1,500 annually; and Secondly, respondent paid the same percentage or proportion of each customer's annual dollar purchase volume in excess of \$1,500 to each such customer within a given annual purchase bracket, but these percentages or proportions varied with the bracket so that competing customers of respondent who received payments did not all receive the same percentage or proportion of their purchase volumes. Thus, 71 customers, each purchasing between \$1,500 and \$2,500 per year, some of whom were in competition with other customers purchasing respondent's products in other amounts, received 3 percent of their purchases; whereas 121 purchasers, purchasing between \$2,500 and \$5,000 a year, some of whom were in competition with other customers purchasing respondent's products in other amounts, received 5 percent, and 3 customers purchasing in excess of \$5,000 a year, some of whom were in competition with other customers purchasing respondent's products in other amounts, received 20 percent of their purchases. Expressed dollar-wise, 121 purchasers in the 5 percent bracket, some of whom were in competition with other purchasers in other brackets in the sale of respondent's products, received a total of \$11,985.31 as payments from respondent; whereas only 3 customers, in the 20 percent bracket, some of whom were in competition with

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other purchasers in other brackets in the sale of respondent's products, received a total of \$107,031.61. There was thus a lack of equal proportionality between customers competing in the sale of respondent's products who received payments, and a complete absence of proportionality between those customers who received something and those competing customers who received nothing.

4. The acts and practices of the respondent in the particulars mentioned above violate subsection (d) of section 2 of the aforesaid Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondent, Elgin National Watch Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or offering for sale of men's and women's watches in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(1) Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer, for advertising services or facilities furnished by or through such customer, unless such payment or consideration is available on proportionally equal terms to all other customers of respondent who in fact compete with the favored customer in the resale of respondent's said products.

(2) Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer, for advertising services or facilities furnished by or through such customer, as a percentage or proportion of the dollar volume of purchases by such customer different from the percentage or proportion offered or granted any other customer where such customers compete in fact in the resale of said products and where such payments are based on the amount of purchases made.

(3) Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale, of any products manufactured or sold by respondent, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

RONELL FASHIONS, INC. 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5916. Complaint, Aug. 16, 1951—Decision, Mar. 17, 1952

Where a corporation and its president and secretary-treasurer, engaged in the manufacture, sale, and distribution in commerce of "wool products" as defined in the Wool Products Labeling Act, including some 500 women's top-per coats, which they made from bolt-ends, samples and other odd pieces of cloth, the actual fiber content of which they did not know—

- (a) Misbranded a substantial number of said garments as to the character and amount of the constituent fibers, including, as illustrative, three of said coats which, all labeled "100% wool", contained 37.1%, 29%, and 35.3% wool respectively, with the balance of viscose rayon; and
- (b) Misbranded certain of said products in that they did not have affixed thereto tags or labels required under the Act:

Held, That such acts and practices, under the circumstances set forth, were in violation of Secs. 3 and 4 of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Russell T. Porter for the Commission.

Conrad & Smith, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Ronell Fashions, Inc., a corporation, and Abraham Wolf and Hyman Ellis, individually and as officers of said corporation, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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, Ronell Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 241-37th Street, New York, New York.

Respondents Abraham Wolf and Hyman Ellis are President and Secretary-Treasurer, respectively, of respondent Ronell Fashions, Inc.,