

IN THE MATTER OF
BENRUS WATCH COMPANY, INC.

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

Docket 5969. Complaint, Mar. 17, 1952—Decision, Nov. 6, 1952

In the resale at retail of brand-name watches, competitive brands, and other merchandise by competing purchasers, any appreciable difference between the prices they pay gives a material competitive advantage to purchasers paying the lower prices and, conversely, imposes a material competitive disadvantage upon purchasers paying the higher prices, and may result in substantial injury to the state of competition between and among such purchasers.

When such lower prices are lower by amounts determined by volume of purchase over a period of time, they tend substantially to divert business to the seller so granting them and away from his competitors, for purchasers have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its men's and women's watches in substantial volume to a substantial number of purchasers, most of them engaged in the competitive resale of such watches and competitive brands at retail, and including single unit and chain jewelry stores and mail order houses;

In selling its said watches pursuant to a plan under which it (1) classified annual purchases into groups which began with those under \$2,000, and included six other progressively larger groups ranging from \$2,000 to \$4,000, \$4,000 to \$8,000, etc. and granted rebates from its list prices ranging from 1% for those whose purchases fell within the second group, to 8% for those whose purchases exceeded the \$50,000 to \$75,000 group; and (2) accorded to its largest volume purchaser a rebate of 14½% below its regular list prices—

Discriminated in price substantially through the granting of such annual rebates both as between the purchasers in each volume bracket and the purchasers in each other volume bracket, many of whom were in competition with each other in the resale of its products, and as between the purchasers in the volume brackets and the purchaser sold at special list prices, who in some instances also competed in resale;

Effects of which discriminations might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and its said purchasers, respectively, were engaged, or to injure, destroy, and prevent competition with it, with the purchasers who received the benefits of such discriminations, and with the customers of both:

Held, That such discriminations in price constituted a violation of the provisions of subsection 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. William L. Pack*, hearing examiner.

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

Weisman, Quinn, Allan & Spett, of New York City, 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 sub-section (a) of section 2 of the Clayton Act (U. S. C. title 15, section 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 Benrus Watch Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 200 Hudson Street, New York, New York.

PAR. 2. From 1946 to the present time, which is the period covered by this complaint, respondent has been engaged continuously in the business of manufacturing and selling men's and women's watches of like grade and quality which will sometime hereinafter be referred to as Benrus watches.

Respondent manufactured watches and parts thereof in several factories which it directly or indirectly owns, one of which is located at New York, New York.

Each year respondent sold a substantial volume of Benrus watches to a substantial number of purchasers with places of business located in the State of New York, in other States of the United States, and in other places subject to the jurisdiction of the United States for resale within such places. In 1948, for example, respondent sold Benrus watches valued at more than \$11,000,000 to more than 3,000 purchasers. Since that time there has been a substantial increase in both number of purchasers and volume of sales.

Most of such purchasers were engaged in the business of reselling Benrus watches, competitive brands of watches, and other merchandise at retail. Included among such retail purchasers were single unit and chain jewelry stores and mail order houses.

Prior to 1946, the year in which respondent was incorporated, Benrus watches had been similarly manufactured and sold for many years by the Benrus Watch Company, a co-partnership.

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PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act, having shipped Benrus watches and caused them to be transported from its factory located in the State of New York to such purchasers with places of business located in other States of the United States and in other places subject to the jurisdiction of the United States. At least one of the purchases involved in each of the discriminations in price hereinafter alleged was in such commerce.

PAR. 4. In each of the discriminations in price hereinafter alleged, respondent in the sale of Benrus watches to the purchasers paying the lower prices was in competition with persons, firms, and other corporations offering for sale and selling competitive brands of men's and women's watches, and the purchasers paying the higher prices or their customers were in competition with purchasers paying the lower prices or with their customers in the resale of Benrus watches, competitive brands of watches, and other merchandise.

PAR. 5. In the resale of Benrus watches, competitive brands of watches, and other merchandise by such competing purchasers, the rate of stock turnover is very low, and because of that and other factors affecting costs the net profit margin is very narrow. Under these circumstances, any appreciable difference between the prices they pay for such merchandise is substantial, giving a material competitive advantage to purchasers paying the lower prices and, conversely, imposing a material competitive disadvantage upon purchasers paying the higher prices.

It is reasonably probable that purchasers receiving the benefit of the lower prices will increase their volume of sales and their profits by reselling some or all of such merchandise at lower prices or by making expenditures for more and better advertising, fixtures, displays, and other services and facilities which also promote sales, or by doing both. On the other hand it is reasonably probable that purchasers paying the higher prices will be able to do neither but will suffer such a corresponding decrease in their volumes of sales and profits that many of them will not continue to have sufficient incentive to engage in vigorous competition.

When such lower prices are lower by amounts which are directly or indirectly determined or measured by volume of purchases over a period of time, there is also a reasonable probability that they will tend substantially to divert business to the seller so granting them and away from his competitors, for it is reasonably probable that purchasers will have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

PAR. 6. In making sales of Benrus watches to such purchasers in the course and conduct of its business in commerce as above alleged, respondent as a practice and policy directly or indirectly discriminated in price by selling such watches to some of such purchasers at substantially higher prices than it sold them to other of such purchasers. Respondent used several methods or devices to effect such discriminations in price, some of which are hereinafter more particularly alleged.

Such discriminations being substantial, it appears to be the fact and, therefore, it is alleged that the effects thereof may be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which respondent and such purchasers, respectively, are engaged, and to injure, destroy, and prevent competition with respondent, with the purchasers who receive the benefit of such discriminations, and with the customers of both of them.

PAR. 7. One of the methods used by respondent to effect some of the discriminations in price alleged in Paragraph Six was the sale of Benrus watches to different retail purchasers at prices which were different by amounts directly or indirectly determined or measured by volume of purchases over a period of time.

Under this method, respondent annually classified purchasers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of Benrus watches. Each of such groups consisted of purchasers 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. The next to the last or second largest volume bracket, although stated so as to include all purchasers with volumes over a stated amount, in fact excluded the purchaser with the largest volume who alone was in the last or largest volume bracket.

Respondent sold Benrus watches at regular list prices to purchasers in all of the volume brackets except the purchaser in the last or largest to whom respondent sold Benrus watches at special list prices.

To purchasers who bought at regular list prices, except purchasers in the first or smallest volume bracket, respondent annually granted from regular list prices rebates in the form of credits which, as between and among purchasers in the same volume bracket, amounted to the same percentage of their respective volumes, but which, as between and among purchasers in different volume brackets, amounted to different percentages of such volumes for the reason that the larger the volume bracket the greater the percentage of volume which was granted as a rebate.

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To the purchaser in the last or largest volume bracket, respondent sold Benrus watches, as aforesaid, at special list prices which were lower than regular list prices by an amount equal to a greater percentage of the regular list prices than was the amount of the rebate granted by respondent from regular list prices to purchasers in the next to the last or second largest volume bracket. (The amount by which special list prices were lower than regular list prices will be stated hereinafter in terms of a rebate from regular list prices.)

By the use of this method, respondent discriminated in price between the purchasers in each volume bracket and the purchasers in each of the other volume brackets.

PAR. 8. The result of the use by respondent of the method of discrimination in price alleged in Paragraph Seven is illustrated by its application to purchasers of Benrus watches in the year 1948 which is shown with substantial accuracy in the following table.

Such table sets forth (Column 1) the volume brackets, (Column 2) the percentage amount of the rebate granted to purchasers in each volume bracket, (Column 3) the number of purchasers in each volume bracket and the total of those purchasers, (Column 4) the volumes of all purchasers in each volume bracket and the total of those volumes, and (Column 5) the dollar amount of the rebates granted to all purchasers in each volume bracket and the total of those rebates.

(1) Volume brackets	(2) Percent rebate	(3) Number of purchasers	(4) Volume of purchases	(5) Dollar rebates
Under \$2,000	0	2,280 plus	\$4,876,682	\$0
\$2,000-\$4,000	1	375	1,004,975	10,050
\$4,000-\$8,000	2	171	887,016	17,740
\$8,000-\$12,000	3	66	631,212	18,936
\$12,000-\$20,000	4	41	576,899	23,076
\$20,000-\$30,000	5	26	646,235	32,312
\$30,000-\$50,000	6	11	397,234	23,834
\$50,000-\$75,000	7	13	786,329	54,973
Over \$75,000	8	16	1,425,680	114,055
Special List Prices	14½	1	384,086	55,779
Totals		3,000 plus	11,617,954	350,775

From this result, it is inferred and therefore alleged that it is not only reasonably probable but almost inevitable that the discriminations in price under the method alleged in Paragraph Seven will have the effects alleged in Paragraph Six.

PAR. 9. The discriminations in price as hereinabove alleged are in violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

CONSENT SETTLEMENT¹

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) (15 U. S. C. A. section 13) the Federal Trade Commission on March 17, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with discriminating in price between different purchasers of commodities of like grade and quality in violation of the provisions of subsection (a) of section 2 of said Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law, and other than the jurisdictional findings, specifically refrains from admitting or denying any of the other said findings as to the facts.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on November 6, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Benrus Watch Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Hudson Street, New York, New York.

PAR. 2. From 1946 to the present time respondent has been engaged continuously in the business of manufacturing and selling men's and women's watches of like grade and quality which will sometime hereinafter be referred to as Benrus watches.

Respondent manufactured Benrus watches and parts thereof in several factories which it directly or indirectly owns, one of which is located at New York, New York.

Each year respondent sold a substantial volume of Benrus watches to a substantial number of purchasers with places of business located in the State of New York, in other States of the United States, and in other places subject to the jurisdiction of the United States for resale within such places. In 1948 respondent sold Benrus watches valued at more than \$11,000,000 to more than 3,000 purchasers. Since that time there has been a substantial increase in both number of purchasers and volume of sales.

Most of such purchasers were engaged in the business of reselling Benrus watches, competitive brands of watches, and other merchandise at retail. Included among such retail purchasers were single unit and chain jewelry stores and mail order houses.

Prior to 1946, the year in which respondent was incorporated, Benrus watches had been similarly manufactured and sold for many years by the Benrus Watch Company, a co-partnership.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act, having shipped Benrus watches and caused them to be transported from its factory located in the State of New York to such purchasers with places of business located in other States of the United States and in other places subject to the jurisdiction of the United States. At least one of the purchases involved in each of the discriminations in price hereinafter found to have existed was in such commerce.

PAR. 4. In each of the discriminations in price hereinafter found to have existed, respondent in the sale of Benrus watches to the purchasers paying the lower prices was in competition with persons, firms,

and other corporations offering for sale and selling competitive brands of men's and women's watches, and many of the purchasers paying the higher prices or their customers were in competition with other purchasers paying the lower prices or with their customers in the resale of Benrus watches, competitive brands of watches, and other merchandise.

PAR. 5. In the resale of Benrus watches, competitive brands of watches, and other merchandise by such competing purchasers, the facts, circumstances and conditions are such that any appreciable difference between the prices they pay for such merchandise gives a material competitive advantage to purchasers paying the lower prices and, conversely, imposes a material competitive disadvantage upon purchasers paying the higher prices and may result in substantial injury to the State of competition between and among such purchasers.

When such lower prices were lower by amounts which were directly or indirectly determined or measured by volume of purchases over a period of time, they would tend substantially to divert business to the seller so granting them and away from his competitors, for purchasers would have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

PAR. 6. In making sales of Benrus watches to such purchasers in the course and conduct of its business in commerce, respondent as a practice and policy directly or indirectly discriminated in price by selling such watches to some of such purchasers at substantially higher prices than it sold them to other of such purchasers. Hereinafter specifically set forth is a statement of methods used by the respondent to effect such discriminations.

Such discriminations are found to have been substantial; and it is further found that the effects thereof may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and such purchasers, respectively, are engaged, or to injure, destroy, and prevent competition with respondent, with the purchasers who received the benefit of such discriminations, and with the customers of both of them.

PAR. 7. One of the methods used by respondent to effect some of the discriminations in price found to exist in Paragraph Six was the sale of Benrus watches to different retail purchasers at prices which were different by amounts directly or indirectly determined or measured by volume of purchases over a period of time; and another method was the sale of Benrus watches to at least one purchaser at special list prices which were lower than the regular list prices at which sales to competing purchasers were made.

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Under the first method, respondent annually classified purchases by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of Benrus watches. Each of such groups consisted of purchasers 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. The largest volume bracket, although stated so as to include all purchasers with volumes over a stated amount, in fact excluded the purchaser with the largest volume of purchases which did not receive any volume discounts; but instead, under the second method stated, was sold Benrus watches by respondent at special list prices which were $14\frac{1}{2}\%$ below respondent's regular list prices at which respondent's watches are sold to its other customers those purchases come within the volume brackets hereinafter set forth.

To purchasers who bought at regular list prices, except purchasers in the first or smallest volume bracket, respondent annually granted from regular list prices rebates in the form of credits which, as between and among purchasers in the same volume bracket, amounted to the same percentage of their respective volumes, but which, as between and among purchasers in different volume brackets, amounted to different percentages of such volumes for the reason that the larger the volume bracket the greater the percentage of volume which was granted as a rebate.

To the purchaser having the largest volume, respondent sold Benrus watches, as aforesaid, at special list prices which were lower than regular list prices by an amount equal to a greater percentage of the regular list prices than was the amount of the rebate granted by respondent from regular list prices to purchasers in the last or largest volume bracket. (The amount by which special list prices were lower than regular list prices will be stated hereinafter in terms of a rebate from regular list prices in the line immediately following the highest volume bracket appearing in the table shown in Paragraph Eight.)

By the use of these methods, respondent discriminated in price as between the purchasers in each volume bracket, and the purchasers in each of the other volume brackets, many of whom were in competition with each other, in the resale of Benrus watches, and as between the purchasers in the volume brackets and the purchaser sold at special list prices, who, in some instances, also competed in the resale of said watches.

PAR. 8. The result of the use by respondent of the methods of discrimination in price found in Paragraph Seven is illustrated by its

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application to purchasers of Benrus watches in the year 1948 which is shown with substantial accuracy in the following table.

Such table sets forth (Column 1) the volume brackets, (Column 2) the percentage amount of the rebate granted to purchasers in each volume bracket, (Column 3) the number of purchasers in each volume bracket and the total of those purchasers, (Column 4) the volumes of all purchasers in each volume bracket and the total of those volumes, and (Column 5) the dollar amount of the rebates granted to all purchasers in each volume bracket and the total of those rebates. Comparable figures respecting the purchaser sold at special list prices are shown in the last line of the table.

(1) Volume brackets	(2) Percent rebate	(3) Number of purchasers	(4) Volume of purchases	(5) Dollar rebates
Under \$2,000.....	0	2,280 plus	\$4,878,682	\$0
\$2,000-\$4,000.....	1	375	1,004,975	10,050
\$4,000-\$8,000.....	2	171	887,016	17,740
\$8,000-\$12,000.....	3	66	631,212	18,936
\$12,000-\$20,000.....	4	41	576,899	23,076
\$20,000-\$30,000.....	5	26	646,235	32,312
\$30,000-\$50,000.....	6	11	397,234	23,834
\$50,000-\$75,000.....	7	13	786,329	54,973
Over \$75,000.....	8	16	1,425,686	114,055
Special List Prices.....	14½	1	384,686	55,779
Totals.....		3,000 plus	11,618,954	350,755

From this result it is found that the discriminations in price under the methods stated in Paragraph Seven may have the effects stated in Paragraph Six.

CONCLUSION

The discriminations in price as hereinabove found to exist are in violation of the provisions of subsection (a) of section 2 of the 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).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Benrus Watch Company, Inc., a corporation engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of men's and women's watches or other jewelry products of like grade and quality to purchasers for resale within the United States and places subject to the jurisdiction of the United States, do forthwith

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cease and desist from directly or indirectly discriminating in price between said purchasers, where either or any of the purchases involved therein are in said commerce, by selling said products to any of said purchasers at prices which are higher than the prices at which said products are sold by respondent to any other of said purchasers (a) where respondent in the sale of said products to any purchaser charged such lower prices is in competition with any other seller and where such lower prices to said purchaser are lower by any amount which is determined or measured by said purchaser's volume or purchases of said products over a period of time, or (b) where any purchaser charged such lower prices is in competition in the resale of said products with any purchaser charged such higher prices.

It is further ordered, That the respondent shall, within sixty (60) days after the 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.

BENRUS WATCH Co., INC.,

By (S) S. RALPH LAZARUS, *Treas.*

(S) WEISMANN, QUINN, ALLAN & SPETT,
Counsel for Respondent.

Date: -----.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 6th day of November 1952.

Syllabus

IN THE MATTER OF
THE AMERICAN ASSOCIATION OF ORTHODONTISTS
ET AL.

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

Docket 6016. Complaint, July 22, 1952—Decision, Nov. 6, 1952

The words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances.

Much of the orthodontic work in the United States is done by dentists who do not specialize in orthodontia, and those who do not have their own laboratories, of whom there are many, must obtain such equipment from third parties who manufacture it or from orthodontists who have laboratories.

The practice of orthodontia includes—in addition to diagnosis, prescription, treatment and application of services to the patient—the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc., which are constructed by orthodontists in their own laboratories, or are purchased by them from orthodontic laboratories or from one another across state lines, and orthodontists participate in the stream of commerce comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of such raw materials into such equipment, and the sale thereof with services to patients or their dentists or to other orthodontists across state lines.

Where an association of orthodontists; a dentist who specialized in the practice of orthodontia and was highly influential in bringing about the things herein involved; and various members engaged in the treatment of patients and sale to them, to their dentists, or other orthodontists, of devices, equipment and material which they made in their own laboratories or purchased, in competition with one another and with others, including various laboratories which advertised their facilities in magazines and trade periodicals—

Acted together cooperatively to restrain and eliminate competition in the manufacture, sale and distribution of dental and orthodontic equipment, supplies, and devices, and attempted to monopolize and control trade therein; and pursuant to said combination—

- (1) Acted to prevent those engaged in the manufacture and sale of orthodontic supplies, devices and appliances from having access to advertising media serving the dental profession;
- (2) Acted to prevent dentists from having the benefit of advertising by those engaged in the manufacture and sale of such supplies;
- (3) Acted to coerce and compel, by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of orthodontic supplies, devices and appliances; and