

Syllabus

IN THE MATTER OF

JULES LIVINGSTON TRADING AS MARYLAND DISTRIBUTORS AND MARYLAND DISTRIBUTING COMPANY

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

Docket 6065. Complaint, Nov. 25, 1952—Decision, Mar. 26, 1953

Where an individual engaged in conducting a mail-order business in watches, in competition with others engaged in the interstate sale of such products who truthfully described and advertised the same; in advertising his said watches in various periodicals—

- (a) Represented through such statements as "Practically wholesale—Direct to user", "x x x Factory Surplus, Originally \$71.95 while stock lasts now only \$24.95 x x x", and other similar statements including words "Factory Surplus Sacrifice", that said watches had been purchased by him from factory surplus stocks and were offered at prices lower than those at which such watches were ordinarily sold; and that \$71.95, \$59.00, and \$71.50 were the customary retail prices, respectively, for the watches concerned;

The facts being he did not purchase said watches from factory surplus stocks; the prices at which they were offered for sale were greatly in excess of wholesale prices; the figures mentioned above as customary retail prices were greatly in excess of retail prices; and no saving resulted for the purchaser who bought his watches;

- (b) Falsely represented through his said advertisement that the watch designated as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; and that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant;

- (c) Represented through the use of such statements in his periodical advertising as "Free. Handsome Expansion Band Included with your order." that an expansion wrist band was given without cost, free, or as an unconditional gift to purchasers of a wrist watch; when in fact it was only furnished in connection with the purchase of a wrist-watch from him, and the price was included in that of the watch; and

- (d) Represented that said watches were guaranteed, through deceptive and misleading use of the statement "Lifetime Written Guarantee", without setting forth the terms and conditions of said guarantee;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and thereby into the purchase of substantial quantities of said watches:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Complaint

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Before *Mr. James A. Purcell*, hearing examiner.
Mr. Frederick McManus 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 Jules Livingston, an individual trading as Maryland Distributors and as Maryland Distributing Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jules Livingston is an individual trading as Maryland Distributors and as Maryland Distributing Company, by which names the said individual is known and under which his business is conducted at his principal place of business located at 501 East Baltimore Street, Baltimore, Maryland. Respondent is now, and has been for more than three years last past, engaged in the sale and distribution of watches.

PAR. 2. In the course and conduct of his aforesaid business, respondent now causes, and for more than three years last past has caused, said watches, when sold by him to be transported from his place of business located in the State of Maryland to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce in said watches between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, at all times mentioned herein, has been in substantial competition in commerce with corporations and with other persons, firms and partnerships engaged in the sale of watches.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the sale of his said watches in commerce, respondent has made numerous statements and representations with respect to said watches in advertisements inserted in various magazines and periodicals. Among and typical, but not all inclusive, of said statements and representations are the following:

Practically wholesale—Direct to user
17 Jewel Self Winding
Factory Surplus
Originally \$71.95 while stock lasts
now only \$24.95
* * *

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Waterproof * * Nonmagnetic

* * *

17 Jewel Shock Protected—Water Resist

Factory Surplus Sacrifice

Originally \$59.00

Our Price Now Only \$16.95

Nonmagnetic * *

17 Jewel Chronograph

Factory Surplus

Originally \$71.50

Our Price \$21.95 plus \$2.20 tax

Precision 4 in 1 time piece

Incablock shock resistant feature * *

This is one of the finest 17 jewel
movements in the World

PAR. 5. Through the use of the statements appearing in the aforesaid advertisements and others similar thereto, but not specifically set out herein, respondent represented, directly or by implication, that said watches had been purchased by him from factory surplus stocks and were offered for sale at prices lower than those at which such watches were sold in the ordinary and usual course of business; that \$71.95, \$59.00 and \$71.50 were the customary and usual retail prices, respectively, for said watches; that all of said watches were 17 jewel watches with the jewels located in accordance with established horological practice for 17 jewel watches; that the watch designated as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, respondent did not purchase said watches from factory surplus stocks and the prices at which they were offered for sale were greatly in excess of wholesale prices. The prices \$71.95, \$59.00 and \$71.50 were not the customary or usual retail prices for said watches at the time they were offered for sale by respondent but were greatly in excess of such prices and were not less than the usual retail prices for said watches. No savings resulted to a purchaser buying these watches. While said watches contained 17 jewels, the jewels were not located in accordance with established horological practice for 17 jewel watches. The movement in the "17 Jewel Chronograph" was not of the finest quality. The 17 "Jewel Self-Winding" watch was not waterproof or nonmagnetic. The "17 Jewel Shock Protected" watch was not nonmagnetic or water resistant. The "17 Jewel Chronograph" watch did not contain the "Incablock Shock Resistant Feature" and was not shock resistant.

Consent Settlement

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PAR. 7. Respondent also, for the purpose of inducing the purchase of wrist watches, made the following representation, and representations of similar import, in advertisements for said watches inserted in periodicals:

Free. Handsome Expansion Band Included with your order.

By means of the above statement, respondent represented that an expansion wrist band was given without cost, free or as an unconditional gift to purchasers of a wrist watch. Said representation was misleading and deceptive. In truth and in fact, an expansion wrist band was not given without cost, free or as an unconditional gift but was only furnished in connection with the purchase of a wrist watch from respondent and its price was included in the price of the wrist watch.

PAR. 8. Respondent, in his advertising of some of his watches, makes use of the statement "Lifetime Written Guarantee." The use of such statement without setting forth the terms and conditions of the guarantee and the manner in which the guarantor would perform thereunder is confusing to the public and constitutes an unfair and deceptive practice.

PAR. 9. The use by respondent of the foregoing statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices, 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.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 25th, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with the use of unfair methods of com-

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 March 26, 1953, 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.

Commissioners Mason and Carretta noting their objection only to the inhibition relating to the use of the word "free."

petition and unfair and deceptive acts and practices in violation of the provisions of said Act.

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 answer to said complaint, 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 of 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 he has engaged in any of the acts and 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 of fact.

3. Agrees 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 has reason to believe were unlawful, 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 Jules Livingston is an individual trading as Maryland Distributors and as Maryland Distributing Company, by which names the said individual is known and under which his business is conducted at his principal place of business located at 501 East Baltimore Street, Baltimore, Maryland.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of watches. Respondent does a substantial volume of business in said watches and causes and has caused such watches when sold to be transported from his place of business in Baltimore, Maryland to purchasers thereof located in other States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of his business as aforesaid, respondent is now and has been in substantial competition with corporations, firms and parties likewise engaged in the sale of watches in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products.

PAR. 4. The advertising of respondent consists of advertisements published in various magazines and periodicals and respondent's business is conducted as a mail order business. All orders are received through and shipments are made to customers by means of and through the United States mails.

PAR. 5. In the course and conduct of his business, and for the purpose of inducing the sale of his said watches in commerce, respondent has made numerous statements and representations with respect to said watches in advertisements inserted in various magazines and periodicals among and typical of which, but not all inclusive, are the following:

Practically wholesale—Direct to user
17 Jewel Self Winding
Factory Surplus
Originally \$71.95 while stock lasts
now only \$24.95

Waterproof * * Nonmagnetic

17 Jewel Shock Protected—Water Resist
Factory Surplus Sacrifice
Originally \$59.00
Our Price Now Only \$16.95
Nonmagnetic * *

17 Jewel Chronograph
Factory Surplus
Originally \$71.50
Our Price \$21.95 plus \$2.20 tax
Precision 4 in 1 time piece
Incablock shock resistant feature**
This is one of the finest 17 jewel
movements in the World

PAR. 6. Through the use of the statements appearing in the aforesaid advertisements and others similar thereto, but not specifically set out herein, respondent represented, directly or by implication, that said watches had been purchased by him from factory surplus stocks and were offered for sale at prices lower than those at which such watches were sold in the ordinary and usual course of business; that \$71.95, \$59.00 and \$71.50 were the customary and usual retail prices, respectively, for said watches; that the watch designated

as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant.

PAR. 7. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, respondent did not purchase said watches from factory surplus stocks and the prices at which they were offered for sale were greatly in excess of wholesale prices. The prices \$71.95, \$59.00 and \$71.50 were not the customary or usual retail prices for said watches at the time they were offered for sale by respondent but were greatly in excess of such prices and were not less than the usual retail prices for said watches. No savings resulted to a purchaser buying these watches. The movement in the "17 Jewel Chronograph" was not of the finest quality. The "17 Jewel Self-Winding" watch was not waterproof or nonmagnetic. The "17 Jewel Shock Protected" watch was not nonmagnetic or water resistant. The "17 Jewel Chronograph" watch did not contain the "Incablock Shock Resistant Feature" and was not shock resistant.

PAR. 8. Respondent also, for the purpose of inducing the purchase of wrist watches, made the following representation and representations of similar import, in advertisements for said watches inserted in periodicals:

Free. Handsome Expansion Band Included with your order

By means of the above statement, respondent represented that an expansion wrist band was given without cost, free or as an unconditional gift to purchasers of a wrist watch. Said representation was misleading and deceptive. In truth and in fact, an expansion wrist band was not given without cost, free or as an unconditional gift but was only furnished in connection with the purchase of a wrist watch from respondent and its price was included in the price of the wrist watch.

PAR. 9. Respondent, in his advertising of some of his watches, makes use of the statement "Lifetime Written Guarantee." The use of such statement without setting forth the terms and conditions of the guarantee and the manner in which the guarantor would perform thereunder is confusing to the public and constitutes an unfair and deceptive practice.

PAR. 10. The use by respondent of the foregoing statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representa-

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tions were true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondent Jules Livingston, trading as Maryland Distributors and as Maryland Distributing Company, or trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the circumstances under which respondent's watches are acquired are other than what they are in fact.

(b) That any quoted price is less than that at which such watches are sold in the ordinary and usual course of business, contrary to the fact.

(c) That the movement in the "17 Jewel Chronograph" watch is of the finest quality.

(d) That the "17 Jewel Chronograph" watch is shock resistant and contains the Incablock feature.

(e) That the "17 Jewel Self Winding" watch is either waterproof or nonmagnetic.

(f) That the "17 Jewel Shock Protected" watch is nonmagnetic or water resistant.

2. Using the word "free" or any other word or words of similar import, to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity, or is not given to the recipient thereof without requiring the purchase of other merchandise, or which is not given without requiring the performance of some service, inuring directly or indirectly to the benefit of the respondent.

3. Representing, directly or by implication, that the watches sold by respondent are guaranteed unless and until the nature and extent of the "guarantee" and manner in which the guarantor will perform are clearly and conspicuously disclosed.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report

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in writing setting forth in detail the manner and form in which he has complied with this order.

By /S/ JULES LIVINGSTON,
Jules Livingston,
Respondent.

Date

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 26th day of March 1953.

Commissioners Mason and Carretta noting their objection only to the inhibition relating to the use of the word "free."

IN THE MATTER OF
BOSTWICK LABORATORIES, INC.

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

Docket 5785. Complaint, June 26, 1950—Decision, Mar. 30, 1953

Where a corporation engaged in the interstate sale and distribution of four insecticides designated "Hep Aerosol Insect Killer", "Bostwick Super-Aerosol Insect Killer", "Bostwick Safe-lex Insect Killer", and "Bostwick Moth Proofer", in competition with other concerns similarly engaged; in advertising its said products through circulars and fliers, and counter display cards and advertising mats distributed to its wholesale distributors, who in turn distributed some of them to retailers for their use—

- (a) Represented that its said "Hep" and "Super-Aerosol" products were safe and would not cause injury to humans, birds, fish, and pets, and, in the case of the latter, to plants;

The facts being that indiscriminate use of said preparations, by virtue of the percentages of DDT and petroleum distillate therein contained, might cause damage to the health of those exposed to the spray; and that they were safe only when used as directed on the label;

- (b) Represented that said "Super-Aerosol" and said "Safe-lex" preparations would kill or destroy all crawling insects in the treated premises; the facts being that an average kill would be about eighty percent and thus repeated applications were necessary from time to time;
- (c) Represented that said "Super-Aerosol" killed insects more quickly than other insecticides; the facts being its relative killing time was not much different from that of many other of the common aerosols nor from that of a wide variety of commercial insecticides;
- (d) Represented that its said "Safe-lex", because of its methoxychlor content, killed practically every household insect twice as fast as DDT preparations and that it was safer for use under all circumstances than all other insecticides;

The facts being a housewife would not observe any difference between killing time of such an insecticide based on methoxychlor and one containing DDT, and other insecticides are as safe to use;

- (e) Represented that its said "Safe-lex" would not stain materials which it contacted; the facts being that it would do so if held too close to surfaces being treated but not if directions for use on the label were observed;
- (f) Represented that its said "Moth Proofer" was effective in protecting garments for a year and was the only preparation on the market which mothproofed;

The facts being that dry-cleaning or laundering reduced the effectiveness of a preceding treatment, the treated articles would be effectively mothproofed