

Decision

50 F. T. C.

IN THE MATTER OF
JOSEPH M. MOORE TRADING AS J. M. MOORE IMPORT-
EXPORT CO.

Docket 6087. Complaint, Mar. 20, 1953—Order and dissenting opinion, Mar. 13, 1954

Charge: Neglecting to disclose source of "Valiant Knight" and "Mor-Flex" expansion watch bands.

Before *Mr. John Lewis*, hearing examiner.
Mr. Jesse D. Kash for the Commission.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner shall, on March 13, 1954, become the decision of the Commission.

Commissioner Mead dissenting.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 20, 1953, issued and subsequently served its complaint in this proceeding upon the above-named respondent, charging him with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, motions were filed by both respondent and counsel supporting the complaint requesting that all further proceedings in this matter be suspended pending the decision of the Commission in Matter of Manco Watch Strap Co., Inc., Docket No. 5854, a case involving issues substantially the same as the instant case. By order of the undersigned dated May 22, 1953, all proceedings in the instant case were suspended pending the issuance of a decision in Matter of Manco Watch Strap Co., Inc. Thereafter, by order and decision issued December 21, 1953, the Commission ordered the dismissal of the complaint in Matter of Manco Watch Strap Co., Inc.

This matter has now come before the hearing examiner on motion of counsel supporting the complaint, requesting that the complaint herein be dismissed without prejudice, for the reason that the facts in this proceeding are substantially the same as those in the Manco case and in the interest of uniform treatment of related cases.

The undersigned hearing examiner having duly considered said motion and the record herein, and it not appearing therefrom that the public interest requires any further proceedings upon the complaint at this time, and respondent not opposing the relief requested,

It is ordered that the complaint herein be, and it hereby is, dismissed, without prejudice to the right of the Commission to institute such further proceedings as future facts may warrant.

DISSENTING OPINION OF COMMISSIONER MEAD

A complaint in this case has been dismissed on the basis of the Commission action in dismissing the complaint in re Manco Watch Strap Company, Inc., Docket 5854. I dissented in the Manco case but did not state for the record the reasons for my dissent.

In view of the fact that this complaint is being dismissed because of the Commission action in the Manco case, I am stating herewith my reasons for disagreeing with such action, and these reasons apply to both cases.

In the Manco case the respondent imported watch bands from China and Japan into the United States. Respondent sold the bands in interstate commerce without adequately informing retailers and the ultimate consumers that the bands were imported from China and Japan.

The Commission on December 21, 1953 issued an order dismissing the Manco complaint and in such order stated:

"The evidence in the record indicates that there are no domestic watch or wrist bands which are sold at prices comparable to the prices at which the respondent's imported bands are sold. There is no evidence in the record showing a preference on the part of a substantial number of members of the purchasing public for the higher priced domestic bands over respondent's lower priced imported bands. The Commission is therefore of the opinion that the complaint herein should be dismissed."

Commissioners Howrey and Gwynne did not participate in the decision in the Manco case, and I dissented. The decision was made by a majority of a quorum.

The Commission has found in a number of cases that a substantial number of persons in the United States believe that any commodities offered for sale in retail stores in the United States are manufactured in the United States unless the commodities are marked to indicate foreign origin.

In *Segal vs. Federal Trade Commission* (142 F. 2d 255), the Court referred to such a finding by the Commission and affirmed an order

the Commission requiring adequate markings of foreign-made goods. The Court referred to the testimony of a disinterested witness as follows:

"One witness was, for example, a buyer from the Woolworth Stores who testified that in his opinion American buyers had become accustomed to the marking of foreign goods, and assumed that goods were made at home when they carried no foreign mark."

The Commission in its decision in the Manco case substantially narrowed and qualified the principle that sellers of foreign-made goods should disclose the fact that the goods are manufactured abroad. The Commission in effect stated that this disclosure is necessary only if there is a domestic product sold at a price comparable to the price at which the imported product is sold. That decision introduced into the law a principle which will be very difficult and complicated to enforce. For illustration, what is a "comparable" price? If the price of a domestic product is \$5.00 and the price of the imported product is \$4.00—are such prices comparable? If the answer is in the negative, what are the exact prices expressed in terms of dollars and cents for the prices to be "comparable?" Is not quality as well as price important to the consumer?

In my opinion the decision of the majority in the Manco case places an intolerable burden on the Government in enforcing the statute in this particular field. Under the decision the Government must attempt to prove the particular price range in which the American consumer will refuse to pay a higher price for the domestic product and will choose to purchase in turn the foreign-made product.

In my opinion the correct approach has been and should be to determine:

(1) whether or not the fact that products made in America or abroad is a material fact to a substantial number of consumers in the United States because such consumers prefer to buy American made goods;

(2) whether or not the failure to reveal the foreign origin of products causes such consumers to believe the products are made in the United States.

If the answers to Questions (1) and (2) are in the affirmative then it is an unfair practice for the seller to fail to reveal the material fact that the products are made in a foreign country.

This approach does not favor American-made products or foreign-made products. It simply requires the seller to state a material fact regarding his foreign-made product, that is, the fact that such product is foreign made, and the country of origin. The consumer, thus informed, can make up his own mind.

The Commission does not have to guess what is in the consumer's mind regarding comparative prices or quality. This principle is enforceable, informative, and effective.

For the reasons stated, I dissent from the action of the Commission in the Manco case and in this case in adopting a new principle regarding foreign markings. In my opinion this new principle will prove inadequate and ineffective.

IN THE MATTER OF
DORIS SAVITCH TRADING AS PERSONAL DRUG CO., AND
LEO SAVITCH

DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6089. Complaint, Mar. 31, 1953—Decision, Mar. 24, 1954

Where an individual trading as Personal Drug Co., and her manager who directed and controlled the business, engaged in the interstate sale and distribution of medicinal preparations which they designated as "Quick-Kaps" and as "D-Lay Capsules"; in advertising in newspapers of interstate circulation, including the "Afro-American"—

Falsely represented by implication that the use of their preparations would provide relief from delayed menstruation due to pregnancy; and specifically represented that its use would provide relief from said condition due to minor functional disorders and borderline anemia; when said product was of value only in those infrequent cases due to iron-deficiency anemia and then only if taken as directed for at least 30 days:

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

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

Mr. Edward F. Downs for the Commission.

Mr. George Landesman, of New York City, for respondents.

DECISION OF THE COMMISSION

The Federal Trade Commission on March 31, 1953, issued a complaint charging Doris Savitch, an individual trading as Personal Drug Co., and Leo Savitch, individually and as manager of said company, with having violated the Federal Trade Commission Act by disseminating false advertisements of a drug preparation sold by them under the names "Quick-Kaps" and "D-Lay Capsules." Respondents filed an answer denying that their advertisements were false or misleading.

Pursuant to notice, hearings were held in Washington, D. C., on June 25, 1953, and in New York City on September 9, 1953, before William L. Pack, a hearing examiner, designated by the Commission to hear this proceeding. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The testimony and other evidence were recorded and filed in the office of the Commission.

Filing of proposed findings and conclusions having been waived, the hearing examiner filed his initial decision on October 9, 1953, in