

Complaint

52 F. T. C.

IN THE MATTER OF
IRVING KATHMAN DOING BUSINESS AS HATHAWAY
WATCH COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6357. Complaint, June 6, 1955—Decision, Sept. 13, 1955

Consent order requiring a seller in New York City to jobbers and dealers to cease representing that exaggerated, fictitious prices of "Hathaway" watches were the usual retail prices, that the watches were "jeweled," manufactured by him, and fully guaranteed.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Frederick J. McManus for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that Irving Kathman, an individual doing business as and trading under the name of Hathaway Watch Company, 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 Irving Kathman is an individual doing business as and trading under the name of Hathaway Watch Company, with an office and principal place of business located at 545 Fifth Avenue, New York, New York. The said respondent is now and for several years last past has been engaged in the business of selling and distributing watches and other articles of merchandise. Said watches are so sold and distributed under the brand name Hathaway.

PAR. 2. In the course and conduct of his business respondent causes said watches, when sold, to be transported from his place of business in the State of New York to jobbers and dealers located in various other States and in the District of Columbia. Said jobbers and dealers in turn sell said watches to retailers for resale to the general public.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his watches, the respondent has made many false, misleading and deceptive statements and representations relative to his said watches in display cards and in other written or printed matter which are widely circulated and distributed. Among and typical of such false, misleading and deceptive statements and representations are the following:

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Designed to Sell for 49.00
Now only 9.95
For limited time only
Precision Jeweled
Guaranteed
1 Year Guarantee Certificate
34 years of Precision Watch Making

PAR. 4. Through the use of the foregoing statements and representations of similar import and meaning, not specifically set out herein, the respondent represents and has represented, directly and by implication, that the regular and customary price at which the said watches are offered for sale is \$49.00; that the said watches are jeweled watches and contain movements that are jeweled movements; that respondent manufactures the watches which he offers for sale; and that the said watches are guaranteed in every respect.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the price of \$49.00 is not the usual and customary price at which respondent's watches are offered for sale and sold at retail. Respondent's watches are customarily and usually offered for sale at retail at a price of \$9.95. The movements in respondent's watches contain but one jewel and said watches are not "jeweled" watches nor do they contain jeweled movements. As generally understood in the industry, a jeweled watch or a jeweled movement watch is one which contains at least 7 jewels, each of which serves a mechanical purpose as a frictional bearing. Hathaway watches are imported from Switzerland and are not manufactured by respondent. Respondent does not guarantee the said watch for one year in every respect. The so-called guarantee provides for payment of a service charge. The nature and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed.

PAR. 6. In the course and conduct of his business, respondent is in direct and substantial competition with other firms, individuals and corporations engaged in the sale, in commerce, of watches.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations has 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 are true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and

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unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

1. The Federal Trade Commission on June 6, 1955, issued its complaint in this proceeding charging the respondent with violation of the Federal Trade Commission Act as will more particularly appear by reference to said complaint. Due service thereof was had upon the respondent and thereafter, on July 26, 1955, respondent entered into an "Agreement Containing Consent Order to Cease and Desist" with counsel supporting the complaint, all in conformity with the provisions of Paragraph No. 3.25 of the Rules of Practice and Procedure of the Commission. Thereafter, on August 1, 1955, said Agreement, after approval by the Director, Bureau of Litigation, was submitted to the hearing examiner who, being of opinion that same effectually disposes of all of the issues herein, hereby accepts same.

2. Said Agreement recites:

(a) Respondent Irving Kathman is an individual doing business as and trading under the name of Hathaway Watch Company, with an office and principal place of business located at 545 Fifth Avenue, New York, New York. The said respondent is now and for several years last past has been engaged in the business of selling and distributing watches and other articles of merchandise. Said watches are so sold and distributed under the brand name Hathaway.

(b) Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

(c) That the agreement disposes of all of this proceeding as to all parties.

(d) Respondent waives:

(i) Any further procedural steps before the hearing examiner and the Commission;

(ii) The making of findings of fact or conclusions of law; and

(iii) All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

(e) That the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

(f) That said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

(g) That said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

(h) That the hereinafter set forth order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

3. Pursuant to the said Agreement and in order to effectuate the intent thereof, the hearing examiner, being of the opinion that the order agreed upon will effectually safeguard the public interest, and that this proceeding is in the public interest, issues the following order:

ORDER

It is ordered, That respondent, Irving Kathman, trading as Hathaway Watch Company, or trading under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the retail price of a watch is any amount which is in excess of the price at which said watch is usually and regularly sold at retail;

2. That a watch is a "jeweled" watch, or that it contains a jeweled movement, unless said watch contains at least 7 jewels, each of which serves a mechanical purpose as a frictional bearing;

3. That he manufactures the watches offered for sale, or sold by him, or that he is a watch manufacturer;

4. That the watches he offers for sale or sells are guaranteed unless and until the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of September, 1955, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
BARBARA E. MARTIN ET AL. DOING BUSINESS AS
HOUSEHOLD SEWING MACHINE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6148. Complaint, Dec. 3, 1953—Decision, Sept. 16, 1955

Order requiring retailers of new and rebuilt sewing machines in Washington, D. C., to cease selling sewing machines of which Japanese-made heads were a part without adequate disclosure of foreign origin; to cease, in advertising their machines, using "bait" prices which were not bona fide offers to sell but were made to obtain leads to possible purchasers, using a misleading "20 Year Guarantee" carrying no qualifications, and implying that attachments and sewing lessons were included in the price of the machines; and representing through use of words "Home," "American Home," etc., as brand names, that their Japanese-made machines were products of the well-known firm of that name.

Mr. William L. Taggart, counsel supporting the complaint.

Mr. Leonard B. Sussholz and Mr. Marvin P. Sadur, of Washington, D. C., counsel for respondents.

INITIAL DECISION OF HEARING EXAMINER JOHN LEWIS

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above named respondents on December 3, 1953, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint, in substance, charges respondents with failing to properly disclose the country of origin on certain Japanese sewing machines sold by them, with improperly using American trade names on such sewing machines, with engaging in what is commonly known as "bait advertising," and with engaging in certain other false and deceptive practices with respect to the prices of the sewing machines advertised by them, the nature of the guarantee covering such machines, and other terms and conditions of sale. Respondents appeared by counsel and filed a joint answer in which they denied having engaged in certain of the illegal practices charged, and alleged that they had