

## Complaint

## IN THE MATTER OF

## WINDSOR PEN CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6356. Complaint, June 6, 1955—Decision, Jan. 10, 1956*

Consent order requiring distributors in New York City to cease selling to jobbers and dealers for resale watches under the brand names "Windsor Jeweled" and "Sinsa Jeweled" with the word "jeweled" appearing on the face, when the watches were not "jeweled" and did not contain "jeweled" movements as understood in the industry.

Before *Mr. James A. Purcell*, hearing examiner.

*Mr. Frederick McManus* for the Commission.

*Mr. Samuel J. Ernstoff* and *Mr. Martin J. Forgang*, of New York City, for respondents.

## 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 Windsor Pen Corporation, a corporation, and Morris Fink and Sadie Fink, individually and as officers of said corporation, hereinafter referred to as respondents, have 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. Windsor Pen Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 352 Fourth Avenue, New York 10, New York.

Individual respondents, Morris Fink and Sadie Fink, are the president and secretary, respectively, of said corporation, and formulate, direct and control the policies, acts and practices of said corporate respondent. Said individual respondents have their office at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of selling and distributing watches. Respondents' watches, under the brand name "Windsor Jeweled" and "Sinsa Jeweled," have been sold and distributed to jobbers and dealers for resale to retailers and to the purchasing public.

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PAR. 3. In the course and conduct of their business, respondents now cause, and for more than two years last past have caused, their watches, when sold, to be transported from their place of business in the State of New York to jobbers and dealers, for resale to the general public, located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said watches, respondents have sold and distributed, and do now sell and distribute, in commerce, as aforesaid, said watches with the word "jeweled" appearing on the face of said watches. By means of the word "jeweled," respondents represent, directly and by implication, that the said watches are jeweled watches and contain movements that are jeweled movements. In truth and in fact, the said watches, described and sold by respondents 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.

PAR. 5. In the course and conduct of their business, respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of watches.

PAR. 6. The practice of respondents, as aforesaid, in selling and distributing their above-described watches with the word "jeweled" appearing on the faces of said watches has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said watches are jeweled movement watches and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

PAR. 7. The acts and practices of respondents, 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 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

The Federal Trade Commission issued its complaint against the above-named respondents on June 6, 1955, charging them with false, misleading and deceptive practices in the sale of watches in violation

of the Federal Trade Commission Act. Thereafter, on November 25, 1955, (filed herein on November 29, 1955), respondents Windsor Pen Corporation, and Morris Fink, entered into an agreement with counsel supporting the complaint providing for the entry of a consent order disposing of all of the issues in this proceeding. Said agreement has been approved by the Director of the Bureau of Litigation and has been submitted to the hearing examiner, heretofore duly designated, for his consideration pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice.

The signatory respondents, in and by the aforesaid agreements, have admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the hearing examiner and the Commission had made findings of jurisdictional facts in accordance with such allegations. Said agreement provides for the waiver of hearing before a hearing examiner; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission and all further and other procedure before the hearing examiner and the Commission to which the respondents might otherwise, but for the execution of said agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents signatory have also agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of said order. It was further agreed that the answer to the complaint, filed herein on June 29, 1955, shall be withdrawn, permission so to do being hereby granted.

It was further agreed that the said agreement, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the terms of the order provided for in said agreement; that said agreement is subject to approval in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice; that said agreement and order issued in this Initial Decision shall not become a part of the official record of this proceeding unless and until they become a part of the decision of the Commission; and that the signing of said agreement is for purposes of settlement only and does not constitute an admission by respondents signatory that they have violated the law as alleged in the complaint.

Said agreement further recites and provides that respondent, Sadie Fink, although the Secretary of the respondent corporation, does not, in any manner, formulate, control or direct the acts and prac-

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tices of the corporation, such direction residing solely in the respondent, Morris Fink. Accordingly the order hereinafter contained will provide for the dismissal of the complaint as to the named respondent Sadie Fink.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the same is hereby accepted by the hearing examiner who, on the basis of the record as constituted makes the following findings for jurisdictional purposes:

1. That the Federal Trade Commission has jurisdiction of the subject matter of this proceeding, as well also of the parties signatory to said agreement and that the complaint herein states a valid cause of action against the signatory respondents under the provisions of the Federal Trade Commission Act.

2. That Windsor Pen Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at No. 352 Fourth Avenue, New York (10), New York; that respondent, Morris Fink, is the President of the respondent corporation and as such formulates, directs and controls the acts and practices of the corporate respondent; that the office and principal place of business of respondent, Morris Fink, coincides with that of the corporate respondent, as above.

Consonant with the express agreement of the parties, as evidenced by the agreement hereinbefore described and referred to, the following order is passed:

## ORDER

*It is ordered*, That respondents Windsor Pen Corporation, a corporation, and Morris Fink, individually and as an officer of respondent Windsor Pen Corporation, and their 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 by implication, 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.

*It is further ordered*, That the complaint be and it is hereby dismissed as to respondent Sadie Fink.

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Decision

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 10th day of January, 1956, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents Windsor Pen Corporation, a corporation, and Morris Fink, individually and as officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF  
ABE MARKS TRADING AS SUMLAR COMPANY

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

*Docket 6407. Complaint, Aug. 24, 1955—Decision, Jan. 10, 1956*

Consent order requiring a seller in Brooklyn, N. Y., to cease advertising falsely in newspapers, etc., that a drug product designated "Vertasol" was a reliable treatment and cure for all kinds of arthritis, rheumatism, and neuritis; would relieve the pain of such conditions; was a new formula, with its effectiveness verified by clinical tests; and that all the ingredients had analgesic and therapeutic value.

Before *Mr. James A. Purcell*, hearing examiner.

*Mr. Charles S. Cox* 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 Abe Marks, an individual trading as Sumlar 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 Abe Marks, is an individual trading as Sumlar Company, with his office and principal place of business located at 3120 Tilden Avenue, Brooklyn 26, New York.

PAR. 2. Respondent is now, and has been for more than nine months last past, engaged in the business of selling and distributing a certain drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said product, and the formula and direction for use thereof are as follows:

Designation: Vertasol.

Formula: "Each tablet contains—

Active ingredients:

Salicylamide 2 gr.;

Sodium Salicylate 2½ gr.;

Caffeine, ⅛ gr.

Inactive ingredients:

Potassium Salicylate ½ gr.;

Niacin 5 mg."