

Complaint

IN THE MATTER OF

IRVING STERN ET AL. TRADING AS STERN BROTHERS
JEWELRY MANUFACTURING COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6428. Complaint, Oct. 18, 1955—Decision, Feb. 22, 1956*

Consent order requiring New York jewelry manufacturers and their out-of-town distributors to cease branding jewelry, particularly chokers and bracelets, of less than 14 karat gold, with the mark "14 K".

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Donald K. King for the Commission.

Schaeffer & Goldstein, 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 Irving Stern, Hyman Stern, Harry Stern and Sylvia Stern hereinafter described as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Irving Stern and Hyman Stern are brothers, trading and doing business as a copartnership under the name Stern Brothers Jewelry Manufacturing Company with their principal office and place of business located at 64 W. 48th Street, New York, New York. Respondents Harry Stern and Sylvia Stern are man and wife trading and doing business as a copartnership under the name Twin Jewelry Company. Their office and principal place of business is also located at 64 W. 48th Street, New York, New York.

PAR. 2. Respondents Irving and Hyman Stern manufacture various types of gold jewelry, particularly chokers and bracelets which they sell to jobbers and wholesalers located in the city of New York. Respondents Harry and Sylvia Stern act as the out-of-town distributors for Irving and Hyman Stern. They do no manufacturing of any kind and buy merchandise exclusively from respondents Irving and Hyman Stern. The two partnerships share the same office and are operated in conjunction with each other.

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PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents Irving and Hyman Stern have manufactured and sold and distributed and do now sell and distribute to respondents Harry and Sylvia Stern and others for resale as hereinafter described certain items of gold jewelry with the phrase "14 K" appearing thereon.

By means of said marking respondents Irving and Hyman Stern represent directly and by implication that said jewelry marked "14 K" is manufactured from gold of 14 karat fineness. Whereas, in truth and in fact said jewelry is not manufactured from gold of 14 karat fineness but rather from gold of less than 14 karat fineness.

PAR. 4. In the course and conduct of their business respondents Harry and Sylvia Stern do now and for some time past have purchased from Irving and Hyman Stern gold jewelry marked "14 K" manufactured from gold of less than 14 karat.

PAR. 5. In the course and conduct of their business respondents Harry and Sylvia Stern now cause and for the three years last past have caused the merchandise purchased by them from Irving and Hyman Stern when sold by them to be transported from their place of business in the State of New York to distributors, jobbers, and retailers for ultimate resale to the general public located in various other States of the United States. Such respondents maintain and at all times mentioned herein have maintained a substantial course of business in said merchandise in commerce between and among the various States of the United States.

PAR. 6. The practice of respondents, as aforesaid, in manufacturing, selling, and distributing the above described jewelry in commerce with the phrase "14 K" appearing thereon, 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 merchandise is manufactured from gold of 14 karat fineness and into the purchase of substantial quantities of said merchandise because of such mistaken and erroneous belief.

PAR. 7. In the course and conduct of their businesses respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale in commerce of gold jewelry.

PAR. 8. 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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 18, 1955, charging them with having violated the provisions of the Federal Trade Commission Act through the making of false and misleading representations with respect to the karat fineness of certain articles of jewelry sold by them. In lieu of submitting answer to said complaint, respondents on December 12, 1955, entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Acting Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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 aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

Decision

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1. Respondents Irving Stern and Hyman Stern are brothers trading and doing business as a copartnership under the name of Stern Brothers Jewelry Manufacturing Company with their principal office and place of business located at 64 West 48th Street, New York, New York. Respondents Harry Stern and Sylvia Stern are man and wife trading and doing business as a copartnership under the name Twin Jewelry Company at the same address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Irving Stern and Hyman Stern, individually and as copartners trading and doing business as Stern Brothers Jewelry Manufacturing Company and Harry Stern and Sylvia Stern, individually and as copartners trading and doing business as Twin Jewelry Company; and respondents' representatives, agents and employees, directly or through any corporate or any other device, in connection with the offering for sale, sale or distribution of any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Stamping, branding, engraving or marking any article with any phrase or mark such as 14K or 18K, or otherwise representing directly or by implication that the whole or a part of any article is composed of gold or an alloy of gold of a designated fineness, unless the article or part thereof so marked or represented is composed of gold of the designated fineness within the permissible tolerances established by the National Stamping Act (15 U.S. Code, Sections 294, et seq.).

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 22nd day of February, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.

Opinion

IN THE MATTER OF
WEST COAST PACKING CORPORATION ET AL.

Docket 5432. Order and opinion, Feb. 24, 1956

Order denying petitions and motions to dissolve desist order on grounds that another corporation purchased entire stock of respondent corporation and none of individual respondents owned any stock in successor company, though two still acted as officers.

Mr. Edward S. Ragsdale for the Commission.
Ekdale & Shallenberger, of San Pedro, Calif., for respondents.

ORDER DENYING PETITIONS AND MOTIONS TO DISSOLVE CEASE
AND DESIST ORDER AND DIRECTING FILING OF COMPLIANCE REPORT

This matter having come on to be heard upon petitions and motions to dissolve, or to modify, the cease and desist order herein,¹ filed on behalf of Chicken of the Sea, Incorporated (formerly named West Coast Packing Corporation), and on behalf of the named individual respondents, and upon answer in opposition thereto filed by counsel supporting the complaint; and

The Commission, for the reasons stated in the accompanying decision, having denied said petitions and motions:

It is ordered, That respondents shall, within thirty (30) 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 cease and desist order hereinbefore entered.

DECISION ON PETITIONS AND MOTIONS TO DISSOLVE OR MODIFY
CEASE AND DESIST ORDER

Per curiam:

On September 5, 1946, the Commission issued its findings as to the facts and conclusion and order to cease and desist in this proceeding directing and requiring West Coast Packing Corporation and its officers and the named individual respondents, in connection with the sale of sea food products in commerce, to cease and desist from paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance or discount in lieu thereof, upon purchases made for such buyer's own account. Thereafter, the Van Camp Sea Food Company, Inc., purchased 96% of the outstanding stock of West Coast

¹ Order to cease and desist, dated Sept. 5, 1946, is reported in 43 F.T.C. 111.