

Decision

IN THE MATTER OF
ROGERS-UNITED CORP. ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6163. Complaint, Feb. 5, 1954—Decision, July 18, 1956*

Order requiring a corporation in New York City, engaged in conducting a "Family Puzzle Contest," to cease representing falsely—in seeking to induce participants to remit for the entire set of their puzzles—that they were distributors of watches and that their puzzle was part of a nationwide program to advertise "Cressine" watches, actually non-existent; that said watches were precision made, shock resistant, dustproof, etc.; and that the watches would be distributed to participants immediately upon submission of all the puzzles and required fees.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Seymour Post of Harris, Corwin & Post, of New York City, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves certain acts and practices by the respondents in the course of interstate commerce, which are alleged in the complaint to be unfair and deceptive and in violation of the Federal Trade Commission Act. This initial decision finds generally that the allegations of the complaint have been established by the evidence and are true, and that the proposed order included in the notice portion of the complaint should be entered against each of the respondents.

The complaint herein was issued on February 5, 1954, charging in substance that respondents in the course of promoting a puzzle contest originating in the City of New York through advertisements disseminated through various other states had caused numerous contestants to participate in the puzzle contest and to send money to the respondents, each upon the promise of receiving from respondents a fine "Cressine" watch upon the completion of the puzzles. It was further alleged that in the course and conduct of respondents' puzzle contest that such "Cressine" watches were advertised and offered to the public through respondents' puzzle contest upon the claim that respondents were distributors of watches and that the puzzle contest was merely a part of their nationwide program of introducing and selling such watches to the public; and that respondents further represented and guaranteed to each contestant

that upon his completing the entire set of puzzles he would receive one of said "Cressine" watches which were fine, dependable and precision made watches with special features. It was further alleged that said representations were false, misleading and deceptive as there was no "Cressine" watch in existence at the time the puzzle contest was initiated and the advertising thereof was carried on; that said watches were cheap, undependable and not precision made; that respondents' puzzle contest was not part of an advertising campaign to establish said watches throughout the country, but in fact it was a purely puzzle contest and said advertisements were intended to secure additional entries; and that said watches had not been made or ordered during the contest.

The evidence shows that in fact the "Cressine" watches were not on hand or even in the process of manufacturing during at least the greater portion of the contest; that the delivery of watches to the contestants was unduly delayed after they had completed their set of puzzles and the watches were cheaply made and of inferior quality. Evidence shows that in addition to said watches to each contestant, grand cash prizes totalling \$100,000 were to be awarded but at the time of the hearing none of such cash prizes had yet been made because, as respondents claim, their board of judges, a secret group the names of whom they would not reveal, was still examining the voluminous number of puzzles submitted in order to determine the grand prize winners. The evidence further shows that a total of some 140,000 contestants were each induced to transmit to respondents a total entry fee of \$11.25 in order to complete one set of puzzles. This aggregated some \$1,475,000 paid to respondents. Furthermore, "quite a few" non-persisting contestants each contributed less than said sum of \$11.25 but the sum total paid to respondents by this latter class of contestants is wholly undeterminable from the evidence in the record. No useful purpose is to be served by long detailed recitation of the evidence, the substance of which is stated in the specific findings of facts hereinafter set forth. The law applicable to this proceeding is so basic as to require no citation or discussion herein.

After this proceeding was assigned for hearing to the undersigned hearing examiner on August 5, 1954, hearing was long delayed due to the fault of no one. Respondents on August 8, 1955, moved to dismiss the complaint, supporting it by the affidavit of respondent Richard M. Edelman. This motion was grounded on the alleged fact that the puzzle contest was then entirely closed and no new offerings were being made by respondents of the watches referred to in their advertisements. This motion was denied on August 10,

1954. Hearings were thereafter held in New York City on September 7, 8 and 9, 1955, and in Washington, D. C. on February 13, 1956, at which latter time the Commission's case-in-chief was rested, and respondents orally moved to dismiss the complaint. After oral arguments were heard, the motion was denied by the hearing examiner.

At a subsequent hearing held on April 10, 1956, for the expressly noticed purpose of hearing the evidence of respondents in support of their answer, their counsel appeared and announced that he had no evidence to present for respondents other than a proposed short verbal stipulation which he made upon the record as to what the respondent Edelman, if present, would further testify to beyond that which he had already testified to as an adverse witness called by counsel supporting the complaint. Counsel supporting the complaint agreed to said statement without, however, agreeing to its truth or materiality. The case was thereupon taken under submission by the hearing examiner, with leave granted to respective counsel to submit their proposed findings of fact, conclusions of law and order, on or before May 1, 1956. Counsel supporting the complaint duly filed such findings, conclusion and order but none were submitted on behalf of respondent.

Upon due consideration of all the substantial, credible and probative evidence in the record and being fully advised in the premises, the hearing examiner from such evidence, and the fair and reasonable inferences arising therefrom, finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and jurisdiction of each of the respondents; that this proceeding has been brought and maintained by the Commission to the public interest; and also makes the following specific findings of fact:

1. Respondent Rogers-United Corp. 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 located at 352 Fourth Avenue in the City of New York, New York. Respondent Richard M. Edelman is president of and the majority stockholder in the corporate respondent, Rogers-United Corp. This individual respondent has dominant control of and directs the policies and activities of the corporate respondent in doing the acts and things hereinafter set forth. Individual respondent Richard M. Edelman has his office and is located at the same address as the corporate respondent. Both respondents use the mailing address "P.O. Box 195, New York, New York."

2. Respondents are now, and during several years last past have been engaged in the promotion of "The Family Puzzle Contest" and

in the course of promoting said contest have caused puzzle entry blanks and puzzle forms to be sent from their place of business in the State of New York to participants in the contest located in the various other States of the United States, and the contestants in said puzzle contest send and have sent the puzzle forms and solutions of said puzzles, together with money for entrance fees in said contest, to the respondents in the State of New York from contestants' locations in various other States of the United States.

3. The course and conduct of respondents' business and activities, including the offering of "Cressine" watches to the participants in their contest, constitutes commercial intercourse between respondents in the State of New York and others located in the various States of the United States other than New York, and constitutes "commerce" as "commerce" is defined in the Federal Trade Commission Act.

4. In the course of conducting their puzzle contest and for the purpose of obtaining participants in their puzzle contest and of causing said participants to remit for the entire set of puzzles respondents have made the following statements and representations:

The distributors of Cressine watches will award \$100,000 in cash prizes.

Everyone who sends in solutions to all of the puzzles in accordance with the rules will receive a smart dependable wrist watch regardless of whether his or her solutions are correct or not.

This great contest is a part of a vast program designed to bring this fine line of distinctive timepieces to the attention of the American public.

Each watch is guaranteed a full year against mechanical defects and should be a source of pride to the wearer for years to come.

Wonderfully dependable Cressine watches.

Cressine watches are precision made, built to give years of service.

Shock resistant, dust proof.

Every contestant receives one of these fine watches.

5. Through the use of the statements and representations hereinabove set out and others similar thereto, respondents have represented, directly and by implication, that they are distributors of watches and that their puzzle contest is part of a nation-wide program to advertise Cressine watches; that the watches to be distributed to participants in the puzzle contest are dependable, distinctive, fine and precision made; that the watches are made to give years of service; that the watches are shock resistant and dust proof; and that the watches will be distributed to the participants immediately upon submission of all the puzzles and the fees required.

6. Said statements were and are false, misleading and deceptive. In truth and in fact at the time respondents started their puzzle contest in January 1952 there was no "Cressine" watch in existence and the first "Cressine" watches were not ordered by respondents

until May 1953 and were not scheduled for delivery until September or October 1953 and February and March 1954.

7. Respondents have not engaged in any national sale of "Cressine" watches except through the puzzle contest, and had no program for distributing "Cressine" watches, except to circularize the contestants in efforts to sell them more expensive watches. The Cressine watches distributed to the contestants as "contest" watches were not offered for sale or sold on the open market.

8. Respondents' contest was not a part of any advertising campaign to advertise, or promote, the sale of Cressine watches aside from the puzzle contest and the only watches sold were those distributed to contestants in the contest.

9. Respondents did not and have not distributed watches to contestants immediately or within a reasonable time after contestants completed the puzzles and remitted their entry fees, but on the contrary respondents waited for months after the receipt of the puzzles and fees before distributing the watches, and have not sent watches to 15,000 to 20,000 contestants who have paid for them. Other contestants did not receive their watches until after complaining to the Better Business Bureaus.

10. The watches which respondents distributed to the paid up contestants in their puzzle contest are of a cheap type and have a retail value of less than eight dollars; they are not fine or distinctive watches but on the contrary are one jewel pin lever Roskopf movement watches and cost respondents less than \$3.00 each.

11. Respondents' "Cressine" watches are not dependable nor precision made, nor are they dust proof.

12. The use by respondents of the aforesaid false, misleading and deceptive statements has had and now has the capacity and tendency to deceive and mislead, and did deceive and mislead the public into the erroneous and mistaken belief that said statements and representations are and were true and to induce and did induce members of the public to participate in respondents' puzzle contest and pay the cash fees required to enter and participate in said contest because of such erroneous and mistaken belief.

Upon the facts herein found, it is concluded that:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and jurisdiction of the person of each of the respondents; and this proceeding is to the public interest; and

2. The said acts and practices of respondents 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.

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Upon the foregoing findings and conclusions, the following order is made against each and all of the respondents herein:

ORDER

It is ordered, That the respondent Rogers-United Corp., a corporation, and its officers, and respondent Richard M. Edelman, individually, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the operation of a puzzle contest and the offering of watches or other merchandise in connection therewith in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That either respondent is engaged in any business other than operating a puzzle contest unless such is the fact;
2. That the puzzle contest is part of a nation-wide program to advertise watches or other merchandise or that the purpose of the contest is to introduce "Cressine" watches or any other merchandise;
3. That the quality of the merchandise offered is superior to what it is in fact;
4. That Cressine watches are:
 - (a) Dependable,
 - (b) Distinctive,
 - (c) Precision made,
 - (d) Fine watches made to give years of service,
 - (e) Dust proof;
5. That merchandise will be distributed to the participants immediately after submission of all the puzzles and required fees unless such is the fact.

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 18th day of July, 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.

Decision

IN THE MATTER OF
DEXTER THREAD MILLS, INC., ET AL.

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

Docket 6306. Complaint, Mar. 3, 1955—Decision, July 18, 1956

Consent order requiring mail order sellers in Elgin, Ill., to cease representing falsely, through use of the words "Thread Mills" or "Mills" in their corporate or trade name and otherwise, that they were manufacturers of the needle craft items they sold to the general public, and that the merchandise was sold at mill prices; and representing falsely that they had been in business "Since 1820".

Mr. William R. Tincher for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On March 3, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair and deceptive acts and practices and unfair methods of competition in commerce by the use of false, misleading and deceptive representations as to the prices at which they sell their needlecraft, and as to the duration and nature of their business organization, in violation of the Federal Trade Commission Act.

On March 29, 1955, Respondents submitted their answer to the complaint herein, and on May 22, 1956, with counsel supporting the complaint, entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent Dexter Thread Mills, Inc., is identified in the agreement as an Illinois corporation, with its office and principal place of business located at 615 Page Avenue, Elgin, Illinois, and individual Respondents Sidney C. Fink and Ralph A. Fried, respectively, as president and secretary of the corporate respondent, having their office at the same place as the corporate respondent, the policies and practices of which they formulate, control and direct, and for the operation and management of which they are responsible.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance therewith.

Respondents, in the agreement, waive any further procedure before the Hearing Examiner and the Commission; the making of findings