

Decision

IN THE MATTER OF
ISIDOR GUTGOLD TRADING AS PEER JEWELRY CO.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6565. Complaint, Aug. 14, 1957—Decision, Feb. 12, 1958

Consent order requiring a manufacturer in New York City to cease selling with the phrase "14 K" appearing thereon, bracelets which were manufactured from gold of substantially less than 14 karat fineness.

Mr. Charles W. O'Connell for the Commission.

Mr. Samuel B. Ohlbaum, of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent Isidor Gutgold, an individual trading and doing business as Peer Jewelry Co., with having violated the Federal Trade Commission Act in certain particulars. The respondent was duly served with process and in due course filed his answer. An initial proceeding was convened at New York, N.Y., on November 14, 1957, pursuant to due notice at which time and place counsel for both parties were present. During a recess of the hearing an "Agreement containing consent order to cease and desist" was executed. The hearing examiner, therefore, recessed the initial hearing pending the submission of said agreement in due course.

On November 18, 1957, there was submitted to the undersigned hearing examiner for his consideration and approval said "Agreement containing consent order to cease and desist" entered into and executed by respondent and his attorney and Charles W. O'Connell, counsel supporting the complaint, which agreement had been thereafter approved by the Bureau of Litigation of the Commission.

On due consideration of said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent Isidor Gutgold is an individual trading and doing business as Peer Jewelry Co., with his office and principal place of business located at 125 W. 45th Street, in the city of New York, State of New York.

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2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 14, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

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

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

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

6. 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.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

Upon due consideration of the complaint filed herein, and the said "Agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent signatory to said agreement; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That Isidor Gutgold, an individual trading and doing business as Peer Jewelry Co., or trading under any other name or

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names, and his agents, representatives and employees, directly or through any corporate or 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 mark such as "14 K," 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, sec. 294 *et seq.*).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

The hearing examiner, on November 22, 1957, having filed his initial decision in this proceeding based on an agreement containing a consent order to cease and desist theretofore executed by the respondent and counsel in support of the complaint; and

The respondent having requested a stay or suspension of the order contained in said decision pending the issuance of similar orders against certain of the respondent's competitors; and

The Commission having considered the matter and being of the opinion that the initial decision is adequate and appropriate to dispose of this proceeding and that a stay or suspension of the order would not be in the public interest:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent's request for a stay or suspension of the order contained therein be, and it hereby is, denied.

It is further ordered, That the respondent, Isidor Gutgold, 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 contained in the aforesaid initial decision.

IN THE MATTER OF
SALYER REFINING CO., INC., ET AL.

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

Docket 6339. Complaint, May 2, 1955—Decision, Feb. 14, 1958

Order requiring a concern in Oklahoma City, Okla., engaged in selling to dealers for resale to the purchasing public reclaimed lubricating oil obtained from crankcase drainings, to cease advertising for sale or selling such oil without disclosing to the purchaser that it was previously used and without a clear statement to that effect on the containers.

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

Mr. Leslie L. Conner, of Oklahoma City, Okla., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the sale of lubricating oil made from previously used oil, without disclosing such prior use. After the filing of respondents' answer (which was subsequently amended) hearings were held at which a substantial amount of evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been filed by the parties, and respondents Salyer Refining Co., Inc., and B. M. Salyer, Jr. (erroneously referred to in the complaint as Ben M. Salyer, Jr.) have also filed a motion to dismiss the complaint. The case is now before the hearing examiner for final consideration.

2. Respondent Salyer Refining Co., Inc., is a corporation organized and doing business under the laws of the State of Oklahoma, with its office and principal place of business at 2400 Northeast 4th Street, Oklahoma City, Okla. Respondent B. M. Salyer, Jr., is president of the corporation and owner of practically all of its capital stock. He formulates all of its policies and directs and controls all of its activities. While respondents P. A. Salyer and Lester L. Suenram are or have been officers of the corporation, their relationship to it has been nominal only, and neither of them has ever participated actively in the control and management of its affairs. It is therefore concluded that the complaint should be dismissed as to respondents P. A. Salyer and Lester L. Suenram, and the word respondents as used hereinafter will not include these individuals.

3. Respondents are engaged in the sale of lubricating oil made from oil which has previously been used in automobile motors. In