

IN THE MATTER OF
MAX J. RAFF ET AL. DOING BUSINESS AS
ARISTOCRAT CLOCK COMPANY

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

Docket 6931. Complaint, Nov. 6, 1957—Decision, Aug. 13, 1958

Order requiring distributors in New York City to cease representing falsely by means of labels, counter displays, display boxes, and trade circulars distributed to dealers and retailers, that their "Artco" watches were jeweled and contained jeweled movements; that watches designated "Seventeen" and "Twenty-One" contained seventeen and twenty-one jewels, respectively; and that the watches were fully guaranteed for one year; and to cease selling watches having bezels composed of base metal simulating gold without disclosing the true metal composition of the bezels.

Mr. Harry E. Middleton, Jr., for the Commission.

Petersen, Steiner & Kohan, of New York, N.Y., by Joseph H. Kohan, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

PRELIMINARY STATEMENT

The Commission's complaint in this matter, issued on November 6, 1957, charged the respondents with the use of certain misleading representations and practices in the advertising and sale of watches. After the filing of respondents' answer to the complaint, there were extended negotiations between counsel looking toward disposition of the proceeding by means of an agreement for a consent order. Because of one difficulty in connection with the proposed order (to be discussed later), such negotiations were unsuccessful, and on April 16, 1958, a hearing was held for the purpose of concluding the proceeding insofar as reception of evidence was concerned.

At this hearing, respondents through their attorney admitted all of the allegations of fact in the complaint, and it was therefore unnecessary that any evidence in support of the complaint be offered. While certain evidence was introduced on behalf of respondents, such evidence was not in contravention of the factual allegations of the complaint but related solely to the proposed order; specifically, to the question whether there should be a postponement of the effective date of one prohibition in the order.

The filing of proposed findings and conclusions was waived and the proceeding is now before the hearing examiner for final consideration.

Respondents having admitted all of the allegations of fact in the complaint, the facts are found to be as therein set forth, to wit:

FINDINGS AS TO THE FACTS

1. Respondents, Max J. Raff and Isadore A. Raff, are individuals and copartners doing business as Aristocrat Clock Company, with their office and principal place of business located at 245 Fifth Avenue, New York, N.Y.

2. Respondents are now, and have been for several years last past, selling and distributing ladies' and men's one and two jewel wrist watches under the trade names of "Artco," "Seventeen" and "Twenty-One."

Respondents cause their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof 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 their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. In the course and conduct of their business and for the purpose of inducing the purchase of their watches, respondents have made numerous statements and representations relative to their watches by the use of labels thereon, counter displays, display boxes, and trade circulars, all of which are distributed throughout the United States to dealers and retailers who handle respondents' products. Among and typical of such statements are the following:

- Swiss Jeweled Movement
- Seventeen
- Twenty-one Constellation
- Full Year Guarantee***

Through the use of these representations and others of similar import, respondents have represented that their watches are jeweled watches and contain movements which are jeweled movements; that the watches designated "Seventeen" and "Twenty-one" contain seventeen and twenty-one jewels, respectively; and that such watches are guaranteed for one year in every respect.

4. These representations were misleading and deceptive. Ac-

tually, the watches so described 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 seven jewels, each of which serves a mechanical purpose as a frictional bearing. Respondents' watches do not contain as many as seven jewels serving a mechanical purpose as frictional bearings.

Respondents' watches are not guaranteed in every respect. The so-called guarantee provides for the payment of a charge for servicing. The terms, conditions and extent to which such guarantee applies, and the manner in which the guarantor will perform thereunder, are not disclosed in the advertising matter.

5. Certain of respondents' watches have cases which consist of two parts, that is, a back and a bezel. The bezel is composed of a base metal which has been treated or processed to simulate or have the appearance of precious metal, that is, gold or gold alloy. Said cases are not marked to disclose the true metal composition of the bezels or to disclose that the bezels are composed of base metal.

The practice of respondents in offering for sale and selling watches having cases composed in part of base metal which has been treated or processed to simulate or have the appearance of precious metal, without disclosing the true metal composition of such parts, is misleading and deceptive and many members of the purchasing public are thereby led to believe that such parts are composed of precious metal.

6. Respondents, by furnishing the advertising material and selling and distributing the watches to dealers and retailers as above set forth, furnish such dealers and retailers the means and instrumentalities by which they may mislead and deceive the purchasing public as to the quality and construction of respondents' watches and the nature and extent of the guarantee.

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

8. The use by respondents of the representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' watches and to induce such members of the public to purchase such watches as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in com-

178

Conclusion

merce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce. The proceeding is therefore in the public interest.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice 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.

The Question With Respect to the Order

The question raised by respondents with respect to the order relates to the matter covered by paragraph 5 of the above findings. The bezels of certain of respondents' watches are made of aluminum or other base metal which has been treated or processed so as to simulate gold. As charged in the complaint and as found above, the sale by respondents of watches having such bezels, without disclosing the true metal composition of the bezels, is misleading to the public.

Respondents are entirely willing for the order issued herein to contain a prohibition covering this practice. The difficulty has to do with the effective date of this portion of the order. Long before the issuance of the complaint, respondents had placed orders for large quantities of watches containing such bezels and these watches have already been manufactured. The watches are now either in the hands of the manufacturer in Switzerland or in the hands of respondents' purchasing agents in Bristol, Conn. Not only are respondents under binding contract to accept and pay for the watches, but the watches bear respondents' trade-mark "Artco" on either the case or the dial. For this reason the watches cannot be sold to anyone other than respondents. Nor is it practicable to stamp the cases or bezels of the watches at this time so as to disclose the metal content of the bezels. This would require that the watches be disassembled, stamped, and then reassembled, and the cost would be prohibitive, particularly in view of the fact that the watches are of an inexpensive grade, being intended to retail at from \$6.95 to \$12.95.

The number of such watches which have been manufactured and which are in the hands of respondents' agents, or in the hands of the manufacturer awaiting respondents' shipping instructions, is approximately 50,000. While the watches are being

Order

55 F.T.C.

sold by respondents to retailers as fast as possible, it will probably be the latter part of December 1958 before all of the watches can be moved. The great bulk of watch sales to retailers are made during the last 6 months of the year. This is because it is not until the Christmas holiday season that retailers are able to sell watches to the public in substantial quantities.

The challenged practice has already been discontinued by respondents. The only difficulty is in connection with the watches which, as stated above, were ordered long prior to the issuance of the complaint.

For the reasons indicated, respondents urge that the effective date of any order on the point in question be postponed until the last of December 1958. In the examiner's opinion the request has substantial merit and should be granted if this may legally be done.

While the precise point has not, so far as the examiner is advised, been passed on by the Commission or the courts, the case of *American Chain & Cable Co., Inc., et al. v. Federal Trade Commission* (1944) 142 F.2d 909, is persuasive as indicating that the Commission does have power to postpone the effective date of an order to cease and desist issued in a proceeding under Section 5 of the Federal Trade Commission Act.

Also persuasive is the *C. E. Niehoff & Co.* case, although this case arose under Section 2 of the Clayton Act rather than under the Federal Trade Commission Act. *C. E. Niehoff & Co. v. Federal Trade Commission* (1957) 241 F.2d 37; *Federal Trade Commission v. C. E. Niehoff & Co.* (1958) 355 U.S. 411.

The hearing examiner being of the view that the Commission does have authority to postpone the effective date of a cease and desist order and that such authority should be exercised in the present case, the effective date of the pertinent prohibition in the order which follows is being postponed to December 31, 1958.

ORDER

It is ordered, That respondents Max J. Raff and Isadore A. Raff, individually and as co-partners doing business as Aristocrat Clock Company, or under any other name, and respondents' 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:

1. Representing, directly or by implication, that a watch is a "jeweled" watch, or that it contains a jeweled movement, unless such watch contains at least seven jewels, each of which serves a mechanical purpose as a frictional bearing.

2. Using the term "Seventeen" or the term "Twenty-One" as a designation for a watch which contains less than seventeen or twenty-one frictional bearing jewels, respectively; or otherwise representing that a watch contains a greater number of jewels than is the fact.

3. Representing, directly or by implication, that watches are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

4. Offering for sale or selling watches, the cases of which are composed in whole or in part of base metal which has been treated to simulate precious metal, without clearly disclosing on such cases the true metal composition of such treated cases or parts.

Provided, however, that nothing contained herein shall be deemed to require the respondents to comply with the requirements of paragraph 4 of this order to cease and desist until December 31, 1958.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the initial decision filed by the hearing examiner and having noted that the last sentence thereof provides that paragraph 4 of the order to cease and desist shall not become effective until December 31, 1958; and

It appearing that such sentence may be incompatible with certain provisions of Section 5 of the Federal Trade Commission Act and should be rewritten:

It is ordered, That this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the last sentence of the initial decision be, and it hereby is, modified to read as follows:

"Provided, however, that nothing contained herein shall be deemed to require the respondents to comply with the requirements of paragraph 4 of this order to cease and desist until December 31, 1958."

It is further ordered, That the initial decision, as so modified,

Decision

55 F.T.C.

shall, on the 13th day of August 1958, become the decision of the Commission.

It is further ordered, That the respondents 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 paragraphs 1, 2 and 3 of the order to cease and desist.

It is further ordered, That the respondents shall, on or before December 31, 1958, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with paragraph 4 of the order to cease and desist.

Decision

IN THE MATTER OF
LANOLE PRODUCTS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7085. Complaint, Mar. 12, 1958—Decision, Aug. 13, 1958*

Consent order requiring a seller in Detroit, Mich., of its "Lanole Scalp Treatment Kit" to cease advertising falsely that its products would prevent excessive hair fall and baldness in the majority of cases and that the principal cause of such conditions was bad scalp hygiene and scalp infection, that the business designated "Patten Research Institute" had engaged in research in connection with the hair and scalp or its preparations, and that it was an institute.

Mr. Morton Nesmith for the Commission.

Mr. Peter T. Jameson, of Detroit, Mich., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The Commission's complaint in this matter charges the respondents with misrepresenting certain cosmetic preparations sold by them, the preparations being intended primarily for use in the treatment of the hair and scalp. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.