

Findings

IN THE MATTER OF
ALAN NELSON ET AL.
TRADING AS ROYALTY JEWELRY COMPANY

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

Docket 6868. Complaint, Aug. 20, 1957—Decision, Oct. 9, 1958

Order requiring manufacturers in New York City to cease stamping "14 K" on gold chains of only 13½ karat fineness.

Mr. S. F. House, supporting the complaint.

Mr. Heinz A. L. Hellmold, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

On August 20, 1957, the Federal Trade Commission issued a complaint charging Alan Nelson and Armin Feiger, individually and as copartners trading as Royalty Jewelry Company, hereinafter referred to as respondents, with violation of the Federal Trade Commission Act by reason of their stamping the phrase "14K" on gold chains which they manufacture, sell and distribute, whereas, they contain gold of a fineness substantially less than 14 carat.

Respondents answered the complaint, admitting some and denying other allegations. Respondents say, among other things, that the stamping "14K" on their gold chains does not constitute a representation to the public that such chains are manufactured from gold of exactly 14 carat fineness, and "14K" may denote any fineness between 13 and 14 carat.

Hearings have been held and counsel for both parties have filed proposed findings of fact, conclusions, and order. All proposed findings of fact and conclusions of law submitted by respective counsel not specifically found or concluded herein are rejected. Upon the basis of the entire record the hearing examiner makes the following findings of fact and conclusions and issues the following order:

FINDINGS OF FACT

1. Respondents Alan Nelson and Armin Feiger are individuals and copartners trading under the firm name of Royalty

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Jewelry Company with their office and principal place of business at 15 West 47th Street, New York, N.Y.

2. Respondents are now, and for sometime last past have been, engaged in the business of manufacturing, distributing and selling gold chains to wholesalers and retailers for resale to the purchasing public.

3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their gold chains, when sold, to be transported from their place of business in the State of New York to wholesalers and retailers located in various other States of the United States for resale to the general public. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said gold chains in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

4. In the course and conduct of their business and for the purpose of inducing the purchase of said gold chains, respondents have sold and distributed, and do now sell and distribute in commerce, as aforesaid, gold chains with the phrase "14K" appearing thereon. By means of said marking, respondents represent, directly and by implication, that said gold chains marked "14K" are manufactured from gold of 14 carat fineness. In truth and in fact said gold chains are not manufactured from gold of 14 carat fineness but are manufactured from gold of substantially less than 14 carat fineness, to wit, $13\frac{1}{8}$ carat.

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 gold chains. The practice of respondents, as aforesaid, in selling and distributing the above-described gold chains in commerce with the phrase "14K" 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 gold chains are manufactured from gold of 14 carat fineness and into the purchase of substantial quantities of said gold chains because of such mistaken and erroneous belief.

6. A substantial portion of the gold chains which respondents manufacture, sell and distribute to wholesalers, jobbers and retail dealers in interstate commerce are stamped "14K," whereas the gold in said chains contains a fineness of only $13\frac{1}{8}$ carat.

7. The National Stamping Act (15 U.S.C. Sec. 294, et seq.)

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provides that the actual fineness of gold (shipped or transported and delivered in "commerce") "shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped" * * * thereon. Admittedly, respondents' acts in knowingly stamping chains "14K" when they contain gold of a fineness of only $13\frac{1}{8}$ carat is a violation of the above-named act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products "14K," when, in fact, their products contain gold of a fineness of only $13\frac{1}{8}$ carat and respondents merely followed this alleged "custom" is no excuse or justification for respondents to violate the law.

8. Respondents have questioned the accuracy of the assay of one of respondents' chains made on behalf of the Federal Trade Commission and respondents claim that the volume of their business in interstate commerce is negligible. A preponderance of the evidence shows that the assay was performed by a reputable firm of assayers and respondents' trade in "interstate commerce" is substantial. The hearing examiner has considered each of the other contentions raised by counsel for respondents and they are without merit.

CONCLUSION

9. 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.

ORDER

It is ordered, That respondents Alan Nelson and Armin Feiger, individually and as copartners trading as Royalty Jewelry Company, or any other name, their 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

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any phrase or mark such as 14K, 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 Commission, by order issued September 19, 1958, having placed this case on its own docket for review, and having considered the matter, has concluded that for purposes of clarification certain modifications hereinafter specified should be made in the hearing examiner's initial decision herein:

Accordingly, it is ordered, That the title "Conclusions" immediately preceding the paragraph numbered 7 of the initial decision be stricken and that, in lieu thereof, the word "Conclusion" be inserted immediately preceding the paragraph numbered 9 of said initial decision.

It is further ordered, That the paragraph numbered 7 of the initial decision be modified to read as follows:

"7. The National Stamping Act (15 U.S.C. Sec. 294, et seq.) provides that the actual fineness of gold (shipped or transported and delivered in 'commerce') 'shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped' * * * thereon. Admittedly, respondents' acts in knowingly stamping chains '14K' when they contain gold of a fineness of only $13\frac{1}{8}$ carat is a violation of the above-named Act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products '14K,' when, in fact, their products contain gold of a fineness of only $13\frac{1}{8}$ carat and respondents merely followed this alleged 'custom' is no excuse or justification for respondents to violate the law."

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Alan Nelson and

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Armin Feiger, 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 contained in the initial decision as modified.

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IN THE MATTER OF
BASKIN FURS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7158. Complaint, May 27, 1958—Decision, Oct. 11, 1958

Consent order requiring furriers in Washington, D.C., to cease violating the labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

Frederick McManus, Esq., for the Commission.

Webster Ballinger, Esq., of Washington, D.C., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 27, 1958, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their fur products. Respondents appeared by counsel and entered into an agreement, dated August 7, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, 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