

Findings

IN THE MATTER OF
REUBEN POMERANTZ JEWELRY CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6869. Complaint, Aug. 20, 1957—Decision, Oct. 16, 1958*

Order requiring manufacturers in New York City to cease representing falsely, by stamping "14K" on gold spiral chain bracelets and chokers manufactured from gold wire of only 13½ karat fineness, that such products were of 14 karat fineness.

Mr. S. F. House supporting the complaint.

Mr. George Landesman, of New York City, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

Reuben Pomerantz Jewelry Co., Inc., Reuben Pomerantz, and Hyman Pomerantz, individually and as officers of said corporation, hereinafter referred to as respondents, are charged with violating the provisions of the Federal Trade Commission Act by misrepresenting the gold content of gold spiral chain bracelets and chokers which they manufacture, sell and distribute to jobbers and retailers for resale to the general public.

The complaint alleges that respondents stamp the phrase "14K" on their gold spiral chain bracelets and chokers which, in fact, are manufactured from gold of less than 14 carat fineness. Respondents admitted some and denied other allegations of the complaint and hearings thereon have been completed. Proposed findings of fact, conclusions and proposed order have been submitted by respective counsel. All findings of fact and conclusions of law proposed by respective counsel not hereinafter specifically found or concluded are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact, conclusions, and issues the following order:

FINDINGS OF FACT

1. The respondent Reuben Pomerantz Jewelry Co., Inc., 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 at 800 Eighth Avenue, New York,

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N.Y. Individual respondents Reuben Pomerantz and Hyman Pomerantz are the president and secretary-treasurer, respectively, of said corporate respondent; they formulate, direct and control the policies, acts and practices of said corporate respondent. Said individual respondents have their office at the same place as the corporate respondent.

2. Respondents are now, and for some time last past have been engaged in the business of manufacturing, selling, and distributing gold spiral chain bracelets and chokers, to distributors, jobbers and retailers for resale to the general public. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the distribution and sale, in commerce, of gold jewelry including spiral chain bracelets and chokers.

3. In the course and conduct of their business, respondents now cause and for some time last past have caused their said bracelets and chokers, when sold, to be transported from their place of business in the State of New York to distributors and jobbers, 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 products 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 products, respondents have sold and distributed and do now sell and distribute, in commerce, as aforesaid, spiral chain bracelets and chokers with the phrase "14K" appearing thereon. In truth and in fact said products 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 fineness.

5. The practice of respondents, as aforesaid, in manufacturing, selling and distributing the above described jewelry 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 products are manufactured from gold of 14 carat fineness and into the purchase of substantial quantities of said products because of such mistaken and erroneous belief.

6. Although the respondents admit, and the hearing examiner

finds, that the spiral chain bracelets and chokers which respondents manufacture, sell and distribute are stamped with the phrase "14K" imprinted thereon, whereas, said products are manufactured from gold wire of a fineness of only $13\frac{1}{8}$ carat fineness, respondents contend that, since they sell and distribute their products to distributors, jobbers and retailers who are cognizant that said products contain gold of a fineness of only $13\frac{1}{8}$ carat, respondents have not deceived anyone.

7. Respondents also contend that there is no privity between respondents and the purchasing public and there is no fraud or deception in the sale of said products to department stores and other wholesale outlets by reason of the fact that the actual amount of gold contained in said products, to wit, $13\frac{1}{8}$ carat, is known to said department stores and wholesalers.

8. The circumstance that respondents do not sell their products direct to the general public does not relieve respondents of responsibility in falsely and deceptively stamping their products. The stamping of "14K" on their products when, in truth and in fact, said products actually contain gold of a fineness of only $13\frac{1}{8}$ carat, is an unfair method of competition as against manufacturers of spiral chain bracelets and chokers who stamp their products truthfully. When misstamped chain bracelets and chokers attract customers by means of fraud which the false stamping perpetuates, trade is diverted from the producer of truthfully marked bracelets and chokers. In *F.T.C. v. Winsted Hosiery*, 258 U.S. 483, the Supreme Court stated "that a person is a wrongdoer who so furnishes another with the means of consummating the fraud has long been a part of the law of unfair competition." Nor does the practice cease to be unfair because the falsity of the manufacturers' representation is so well known to the trade that dealers, as distinguished from consumers, are no longer deceived.

9. 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

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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.

CONCLUSIONS

10. The acts and practices of respondents, as herein found, 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, Reuben Pomerantz Jewelry Co., Inc., a corporation, and its officers, and Reuben Pomerantz and Hyman Pomerantz, individually and as officers of said corporation, and 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 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 23, 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 paragraphs 9 and 10 be deleted and the following substituted therefor as paragraph 9:

"9. The National Stamping Act (15 U.S.C. Sections 294, et

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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, Reuben Pomerantz Jewelry Co., Inc., a corporation, and Reuben Pomerantz and Hyman Pomerantz, individually and as officers of said corporation, 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
F. A. GOSSE COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(c) OF THE CLAYTON ACT

Docket 7099. Complaint, Mar. 27, 1958—Decision, Oct. 16, 1958

Consent order requiring a Seattle broker of canned salmon and other sea food products, to cease making illegal brokerage payments to favored customers, in violation of Section 2(c) of the Clayton Act through (1) selling at net prices less than the amount accounted for to the packer-principals; (2) granting price reductions, a part or all of which were not charged back to the packer-principals; and (3) taking reduced brokerage on sales involving price concessions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent F. A. Gosse Company, hereinafter sometimes referred to as corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1800 Exchange Building, Seattle, Wash.

Respondent Frederick A. Gosse is an individual and is president of the corporate respondent, and owns all or substantially all of its capital stock. As president and owner, he formulates, directs and controls the acts, practices and policies of the said corporate respondent, including its sales and distribution policies.

PAR. 2. Respondents, both corporate and individual, are now and for many years past have been engaged in the business of selling and distributing food products, including canned salmon, all of which are hereinafter sometimes referred to as food products. Respondents distribute as primary brokers, negotiating sales for the account of a number of their packer-principals. Respondents are a substantial factor in the seafood industry, particularly in the sale and distribution of canned salmon.