

Complaint

IN THE MATTER OF
LONGINES-WITTNAUER WATCH COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7117. Complaint, Apr. 10, 1958—Decision, Nov. 15, 1958

Consent order requiring importers of jeweled watch movements and parts from Switzerland which they assembled in their New York workshops, with sales in 1955 in excess of \$20,000,000, to cease making payments for newspaper, television, and other advertising to a chain of retail jewelry stores—including six in and around Philadelphia and one in Norfolk, Va., and which acted as buyer also, and handled advertising, for four other affiliated retail jewelry dealers located in the Delaware Valley of Pennsylvania and New Jersey—without making such payments available on proportionally equal terms to all their other customers competing with such favored buyers; and requiring aforesaid retail jewelry chain and its affiliates to cease knowingly inducing and receiving such payments in excess of the limit of 3% of the amount of purchases from respondents' sellers and 50% of the cost of advertising, as set by said sellers for all other customers competing with the favored chain and affiliates.

COMPLAINT

The Federal Trade Commission, having reason to believe Longines-Wittnauer Watch Company, Inc., a corporation, and Vacheron & Constantin-Le Coultre Watches, Inc., a corporation, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, and the Commission having further reason to believe that Associated Barr Stores, Inc., a corporation, and Myer B. Barr, as an individual and as president of Associated Barr Stores, Inc., have violated and now are violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondents Longines-Wittnauer Watch Company, Inc., and Vacheron & Constantin-Le Coultre Watches, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York. Both said respondents have their principal office and place of business at

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580 Fifth Avenue, New York 36, N.Y. For brevity the term respondents Longines, et al., shall be sometimes used herein to refer to these respondents.

PAR. 2. Respondents Longines, et al., are now and for many years have been engaged in the business of importing, assembling, distributing, and selling time keeping equipment, primarily watches.

Respondents Longines, et al., import jeweled watch movements and parts thereof from the nation of Switzerland. These items are then assembled by the said respondents in their workshops located in the State of New York. Respondents Longines, et al., then distribute and sell the products thus assembled directly to some four thousand retail dealers, primarily jewelers, located throughout the United States, who in turn resell these products to the consuming public.

Sales made by respondents Longines, et al., are substantial, being in excess of \$20,000,000 for the year 1955.

PAR. 3. Respondent Vacheron & Constantin-Le Coultre Watches Inc., is a wholly owned subsidiary of respondent Longines-Wittnauer Watch Company, Inc. To all intents and purposes respondent Vacheron & Constantin-Le Coultre Watches, Inc., is operated as a division of its parent company in that both corporations are governed by identical boards of directors, occupy the same premises, the financial records of both are kept on one ledger, and the advertising policies of both are uniform and under the control of one advertising manager.

Although respondent Vacheron & Constantin-Le Coultre Watches, Inc., and respondent Longines-Wittnauer Watch Company, Inc., each has its own distinct line of watches, both lines are marketed together and advertising credits accumulated by a retail dealer through purchases of one line can be applied to advertising either line.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents Longines, et al., are now engaged, and for many years have been engaged in commerce as "commerce" is defined in the Clayton Act, as amended, having sold and distributed their watches assembled in their workshops in New York and caused the same to be transported from their place of business in New York to purchasers located in other states of the United States and other places under the jurisdiction of the United States in a constant current of commerce.

PAR. 5. Respondent Associated Barr Stores, Inc., is a corpora-

tion organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1112-1114 Chestnut Street, Philadelphia, Pa.

PAR. 6. Respondent Associated Barr Stores, Inc., is now and for many years has been engaged in the operation of a chain of retail jewelry stores selling jewelry and a number of other products, including watches, to the consuming public. Said respondent operates six retail jewelry stores in and around Philadelphia, Pa., and one retail jewelry store in Norfolk, Va.

Respondent Associated Barr Stores, Inc., is affiliated with four other corporations, all of which are engaged in the retail jewelry business in the Delaware Valley of Pennsylvania and New Jersey. It is the practice of said respondent to purchase the merchandise requirements for all these affiliates as well as for its own requirements. These affiliates are: Barr's Jewelers, located in Camden, N.J.; Barr's Inc., located in Chester, Pa.; Gemcraft Inc., located in and around Philadelphia, Pa.; and Gemcraft of New Jersey, Inc., located in and around Camden, N.J. For brevity, these affiliates will hereinafter sometimes be referred to as affiliated corporations. In addition to acting as buyer for said affiliated corporations, respondent Associated Barr Stores, Inc., also handles substantially all advertising, including that of the products of respondents Longines, et al., sold in the stores of said affiliated corporation.

Sales made by respondent Associated Barr Stores, Inc., are substantial, being approximately \$2,140,000 for the fiscal year ending June 30, 1955.

PAR. 7. Respondent Myer B. Barr, an individual, is president of respondent Associated Barr Stores, Inc., and personally directs and supervises its policies and operations. Substantially all the stock of respondent Associated Barr Stores, Inc., and its affiliated corporations, as hereinabove set out, is owned by the said Myer B. Barr and individual members of his family. The acts and practices of respondent Associated Barr Stores, Inc., as described herein have been and now are under the direct personal supervision of the said Myer B. Barr.

PAR. 8. In the course and conduct of its business as aforesaid, respondent Associated Barr Stores, Inc., and affiliated corporations are now and for many years have been in competition with other corporations, partnerships, firms and individuals located in the cities of Philadelphia and Chester, Pa., Camden, N.J., and

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Norfolk, Va., who are also engaged in the selling at retail of the watches assembled, distributed and sold by respondents Longines, et al.

PAR. 9. In the course and conduct of their business in commerce, as aforesaid, and more specifically during the years 1954, 1955, and 1956, respondents Longines, et al., have sold and distributed substantial quantities of their watches to a number of retail dealers in such products in Philadelphia and Chester, Pa., Norfolk, Va., and Camden, N.J., including Associated Barr Stores, Inc., and its affiliated corporations. Respondents Longines, et al., have transported such products or caused the same to be transported from said respondents' work shops in New York or from other places located outside the Commonwealths of Pennsylvania and Virginia and the State of New Jersey to such retailer customers, including respondent Associated Barr Stores, Inc., and affiliated corporations located in the Cities of Philadelphia and Chester, Pa., Camden, N.J., and Norfolk, Va.

PAR. 10. In the course and conduct of their business in commerce, as aforesaid, and more specifically in the years 1954, 1955, and 1956, respondents Longines, et al., have paid or contracted for the payment of money, goods, or other things of value to or for the benefit of Associated Barr Stores, Inc., and affiliated corporations as compensation or in consideration for services or facilities, including newspaper, television, and other advertising media, furnished or agreed to be furnished by or through respondent Associated Barr Stores, Inc., and affiliated corporations in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and affiliated corporations of the watches assembled, sold, and distributed by respondents Longines, et al., and respondents Longines, et al., have not made available or contracted to make available, or authorized such payments, allowances, or consideration on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations in the handling, selling, or offering for sale of the watches assembled, distributed, and sold by respondents Longines, et al.

PAR. 11. The acts and practices of respondents Longines, et al., as alleged in paragraph 10 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count II

PAR. 12. Paragraphs 1 through 11 of Count I hereof are hereby

set forth by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 13. In the course and conduct of their business as aforesaid, and more specifically during the years 1954, 1955, and 1956, respondents Associated Barr Stores, Inc., and Myer B. Barr knowingly induced and received and knowingly contracted for the payment of money, goods, or other things of value to the said respondents and to the affiliated corporations of respondent Associated Barr Stores, Inc., and for the benefit of said respondents and affiliated corporations from respondents Longines, et al., as compensation or in consideration for services or facilities furnished by or through said respondent Associated Barr Stores, Inc., and affiliated corporations in connection with the offering for sale or sale by said respondent and affiliated corporations of the watches assembled, distributed, and sold by respondents Longines, et al., in the course of interstate commerce, which payments or considerations said respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known were not made available on proportionally equal terms to all other customers of respondents Longines, et al., competing with said respondent Associated Barr Stores, Inc., and affiliated corporations in the retail sale of watches assembled, distributed, and sold by respondents Longines, et al.

PAR. 14. As illustrative of the acts and practices alleged in paragraph 13 herein, although respondents Associated Barr Stores, Inc., and Myer B. Barr knew or should have known that during the years 1954, 1955, and 1956 all other corporations, partnerships, firms, or individuals competing with said respondents in the sale of the watches of respondents Longines, et al., were limited by respondents Longines, et al., with regard to the extent to which they would be reimbursed or compensated for advertising undertaken in connection with said respondents Longines, et al., in the advertising of said respondents' products, to an amount of money or other things of value not in excess of 3% of the amount of their purchases from respondents Longines, et al., for a given period of time, and also not in excess of 50% of the cost of any given advertisement; nevertheless respondents Associated Barr Stores, Inc., and Myer B. Barr knowingly induced respondents Longines, et al., to grant reimbursement or compensation to them in amounts in excess of both the above stated limits with regard to advertising undertaken by them in connection with the sale or offering for sale of the products of

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respondents Longines, et al., on numerous occasions during the years 1954, 1955, and 1956.

PAR. 15. On numerous occasions during the years 1954, 1955, and 1956 respondents Associated Barr Stores, Inc., and Myer B. Barr placed advertisements, including certain of those referred to in paragraph 14 herein, in newspapers the circulations of which were not limited to the state or states of the United States in which such newspapers were published but had in addition thereto substantial circulation in one or more states outside the state of publication.

PAR. 16. The acts and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr as herein alleged are part of an extensive advertising program undertaken by said respondents in conjunction with a large number of suppliers. As a result of this program said respondents have achieved and continue to maintain a dominant position with regard to advertising on the part of retail jewelers in the market areas in which said respondents are engaged. Such acts and practices enabled said respondents in 1954 to place more advertising space in the three leading newspapers circulated in Philadelphia, Pa., than all other jewelers competing with said respondents combined.

PAR. 17. The methods, acts, and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, including the inducing and receiving of payments for the advertisement of the products of respondents Longines, et al., and the advertisement in interstate media of such products offered for sale and sold in the stores of respondent Associated Barr Stores, Inc., and affiliated corporations, knowing that said payments were not made available on proportionally equal terms to all other customers competing with respondent Associated Barr Stores, Inc., and affiliated corporations, as hereinbefore alleged, are methods, acts, and practices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 18. The methods, acts, and practices of respondents Associated Barr Stores, Inc., and Myer B. Barr, as alleged in Count II hereof, of knowingly inducing and receiving payments or allowances from respondents Longines, et al., that said respondents knew or should have known were made by respondents Longines, et al., in violation of subsection (d) of Section 2 of the aforesaid Clayton Act as alleged in Count I hereof, are all to the prejudice and injury of the public and constitute unfair methods of com-

petition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Mr. William H. Smith and Mr. James R. Fruchterman for the Commission

Goodwin, Danforth, Savage & Whitehead, of New York, N.Y., for Longines-Wittnauer Watch Co., Inc., and Vacheron & Constantin-Le Coultre Watches, Inc., and *Abrahams & Loewenstein*, by *Mr. Maurice J. Klein*, of Philadelphia, Pa., for Associated Barr Stores, Inc., and Myer B. Barr.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 10, 1958. Count I thereof alleges that respondent Longines-Wittnauer Watch Company, Inc., and its wholly owned subsidiary, respondent Vacheron & Constantin-Le Coultre Watches, Inc., are engaged in the business of importing, assembling, distributing, and selling time-keeping equipment, primarily watches, and that, in the course of such business, respondents import jeweled watch movements and parts thereof from Switzerland, assemble said items in their workshops located in the State of New York, and distribute and sell the products thus assembled directly to some four thousand retail dealers, primarily jewelers, located throughout the United States, for resale to the consuming public, respondents' sales during the year 1955 having been in excess of twenty million dollars. Said respondents are charged with violating §2(d) of the Clayton Act as amended, by paying or contracting for the payment of money, goods or other things of value, during the years 1954, 1955 and 1956, to, or for the benefit of, respondent Associated Barr Stores, Inc., and its affiliated corporations, as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through respondent Associated Barr Stores, Inc., including newspaper, television and other advertising media, in connection with the handling, sale, or offering for sale by respondent Associated Barr Stores, Inc., and its affiliated corporations of the watches assembled, sold, and distributed by respondent Longines-Wittnauer and its subsidiary; which payments, allowances or consideration were not made available on proportionally equal terms to all of respondent Longines-Wittnauer's other customers competing with respondent Associated Barr Stores, Inc.

Count II of the complaint charges respondent Associated Barr Stores, Inc., and its president, respondent Myer B. Barr, with unfair methods of competition and unfair acts and practices in commerce in violation of §5 of the Federal Trade Commission Act, by knowingly inducing, receiving and contracting for such unlawful payments, allowances or consideration, which they "knew or should have known" were not being offered on proportionally equal terms to all those of their competitors who were also customers of respondents Longines-Wittnauer Watch Company, Inc., and Vacheron & Constantin-Le Coultre Watches, Inc., subsidiary thereof.

On July 23, 1958, respondents Associated Barr Stores, Inc., and Myer B. Barr, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, and on September 19, 1958, respondents Longines-Wittnauer Watch Company, Inc., and Vacheron & Constantin-Le Coultre Watches, Inc., their counsel, and counsel supporting the complaint entered into a similar agreement. Both agreements were approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The first agreement identifies respondent Associated Barr Stores, Inc., as a Delaware corporation, having its principal office and place of business at 1112-1114 Chestnut Street, Philadelphia, Pa., and individual respondent Myer B. Barr as president thereof, and having the same address. The second agreement identifies respondents Longines-Wittnauer Watch Company, Inc., and Vacheron & Constantin-Le Coultre Watches, Inc. as New York corporations, with their office and principal place of business located at 580 Fifth Avenue, New York, N.Y.

In both agreements, 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 with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and each agreement as to the parties signatory thereto; that the

order to cease and desist, as contained in each agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, the provisions of the two agreements, each as to the parties signatory thereto, and the proposed orders, the hearing examiner is of the opinion that such orders constitute a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreements, the hearing examiner accepts the two Agreements Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Longines-Wittnauer Watch Company, Inc., and Vacheron & Constantin-Le Coultre Watches, Inc., their officers, employees, agents, and representatives, directly or through any corporate or other device in connection with the sale of watches in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to or for the benefit of Associated Barr Stores, Inc., or any other customer, as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale, or distribution of respondents' products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That respondent Associated Barr Stores, Inc., a corporation, its officers, and Myer B. Barr, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of jewelry or other products, do forthwith cease and desist from:

Knowingly inducing, receiving, or contracting for the receipt

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of, the payment of anything of value from any supplier as compensation or in consideration for advertising or other services or facilities furnished by or through the corporate respondent, its affiliates, subsidiaries, or successors, in connection with the handling, offering for resale or resale by said corporate respondent, its affiliates, subsidiaries, or successors, of said products, when such payment or other consideration is not made available by such supplier on proportionally equal terms to all other customers competing with said corporate respondent, its affiliates, subsidiaries or successors in the sale or distribution of such products.

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 15th day of November 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, as named in the caption hereof, 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
B & C DISTRIBUTORS CO., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7077. Complaint, Feb. 28, 1958—Decision, Nov. 18, 1958*

Consent order requiring two associated distributors of radio and television tubes, principally to jobbers, to disclose clearly on cartons, in advertising, invoicing and shipping memoranda, when the tubes they sold were used, pull-outs, factory rejects, or JAN surplus.

The proceeding as to the remaining individual respondent was disposed of by order with the same provisions on Dec. 13, 1958, p. 866 herein.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser*, of Paterson, N.J., for all respondents except Edward Chernela.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT
EDWARD CHERNELA BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with failure to disclose the true nature of the used, pullout, factory reject and JAN surplus radio and television tubes which they sell and distribute in commerce, thereby misleading and deceiving the public into the erroneous belief that such tubes are unused, new, and first quality tubes, in violation of the provisions of the Federal Trade Commission Act.

After the issuance of the complaint, all respondents except Edward Chernela, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondents B & C Distributors Co. and Revere Labs., Inc., as New Jersey corporations, with their office and principal place of business located at 840 Main Street, Paterson, N.J., and individual respondents Philip L. Bornstein and Celia Bornstein as president and secretary, respectively, of each of said corporations, and having the same address.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional