

IN THE MATTER OF
ALLEN V. TORNEK COMPANY

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

Docket 6344. Complaint, May 5, 1955—Decision, May 13, 1959

Order requiring a New York City distributor of "Tornay" watches to cease preticketing the watches with tags bearing fictitious prices greatly in excess of usual retail prices; representing falsely in advertisements and on the face of the watches that said watches contained "21 JEWELS" each of which served a mechanical purpose as a frictional bearing; and that the "Resevoil" device in the watches provided "twice as much oil to the vital parts."

A charge that said device significantly increased the amount of oil to vital parts of the watch and assured longer life expectancy was dismissed.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 5, 1955, issued and subsequently served upon the respondent Allen V. Tornek, an individual trading as Allen V. Tornek Company, its complaint, charging said respondent with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act.

An answer was filed by the respondent on July 1, 1955, and thereafter hearings were held in due course. The hearing examiner filed his initial decision on September 24, 1958, in which he held that certain of the charges of the complaint were sustained by the record and that others were not sustained. He included in his decision an order prohibiting the practices which he found to be unlawful and dismissing the allegations of the complaint which he found had not been sustained.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint and the respondent filed cross-appeals from the said initial decision, and the Commission, after considering the appeals, the briefs and oral argument in support of and in opposition thereto, including briefs filed by Hamilton Watch Company and Elgin National Watch Company, Bulova Watch Company, Inc., and American Watch Association, Inc., as *amici curiae*, and the entire record herein, rendered its

1770

Findings

decision denying respondent's appeal and granting in part and denying in part the appeal of counsel in support of the complaint, and directing that an order issue accordingly, so as in effect to set aside and vacate the aforesaid initial decision.

Thereafter, this matter came on for final consideration by the Commission, and the Commission, being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order, which, together with the aforesaid decision on the appeal, shall be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

1. Respondent Allen V. Tornek is an individual trading as Allen V. Tornek Company and is now, and for some time past has been, engaged in the sale of watches under the brand name of Tornay. His place of business is located at 75 West 45th Street, New York, N.Y.

2. Respondent in the course and conduct of such business now causes, and for some time past has caused, his Tornay watches, when sold by him, to be transported from his place of business to purchasers located in other States of the United States, and there is now, and for some time past has been, a constant current in commerce in such watches between and among the various States of the United States.

In the course and conduct of such business, respondent is now, and for some time past has been, in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale of watches to jobbers and retailers in the United States.

3. Respondent has supplied to retail customers price tags for his watches ranging from \$19.75 to \$125.

The record establishes, through the testimony of a witness called in support of the complaint, James O. Simpkins, who operates a chain of retail jewelry stores and purchased approximately \$100,000 worth of respondent's watches from 1951 through 1955, that such prices were not the usual and regular prices at which said watches were sold but were greatly in excess thereof, and were used as a device to lead customers into believing that the retail price had been substantially reduced.

Accordingly, it is concluded and found that respondent, by furnishing such price tags for his watches in the course and conduct of his business in commerce, represented and placed in

Findings

55 F.T.C.

the hands of purchasers of his watches a means and instrumentality by and through which they may represent that such amounts are the usual and regular retail prices of said watches, when in truth and in fact such representations and instrumentalities were false, misleading, and deceptive.

4. Respondent is the coowner of a patented device, called "Resevoil," consisting of a small metal plate in which are embedded four jewellike stones. Respondent purchases regular 17-jewel watch movements imported from Switzerland and attaches to them the Resevoil device. After encasing said movements, respondent sells his watches to jobbers and retailers. Respondent imprints on the face of such watches the legend "Tornay 21 Jewels" and has furnished to dealers advertising material representing such Tornay watches as 21-jewel watches. It is not disputed that respondent represents his watches to be 21-jewel watches and it is so found. The issue, however, is whether respondent in this connection has represented, as alleged by the complaint, that Tornay watches contain "21 jewels each of which serves a mechanical purpose as a frictional bearing, that is each jewel provides a mechanical contact at a point of wear." The important question is as to the meaning of the term "jewel" as understood in the watch industry and trade.

Both parties called a number of expert witnesses and the record is replete with testimony and exhibits describing in detail both the functioning of traditional 17-jewel and 21-jewel watches as well as respondent's device. Basically, a watch is made up of a series of wheels which transmit the power, stored in the mainspring by winding, from one to each other until the final stage of moving the hands on the dial of the watch. The power stored by the mainspring is transmitted consecutively to a group of four wheels, referred to as the train. These are the center wheel, the third wheel, the fourth wheel and the escape wheel. Also in the mechanism is an element of timing called the balance wheel. These various wheels are mounted on axles which have smaller pivots at each end, which pivots are held in place by hole jewels mounted in metal bridges or plates in order to hold the entire mechanism together. These jewels are, of course, acting as bearings since the pivot is held in place by and revolves in the hole jewel each time the wheel turns.

These jewels are tiny convex cylinders of synthetic sapphire or ruby with a hole in the center through which the pivot pro-

trudes. In order to maintain constancy of friction, it is essential that the hole jewels be lubricated with oil. Jewels are used instead of some other material because of their extreme hardness, their ability to take a high polish, and their relative imperviousness to wear and changes in temperature. Each hole jewel is embedded in a metal plate or bridge of the watch prior to assembly so that it will remain stationary at all times. Four of the hole jewels are mounted in a metal plate called the train bridge. They constitute the four bottom bearings of the axles of the four wheels which make up the train. In the traditional 17-jewel watch, these four hole jewels are in effect open at the point where the pivot comes through, and are only covered as a result of the enclosure of the movement in the case of the watch.

In every watch, the moving of the wheels results in what is known as side shake and end thrust. Side shake is caused by the movement of the wheels and axles, and is retained by the sides of the hole jewel through which the pivot extends. End thrust results from tipping the watch up or down so that the staff and pivot move correspondingly slightly up or down and thus bear against the hole jewel. In the usual or ordinary hole jewel construction, end thrust is retained by the bottom of the hole jewel coming in contact with the square shoulder of the axle, which is greater in diameter than its pivot point and the hole jewel. However, at one place in a 17-jewel watch, as well as several places in a 21-jewel watch, a different type of staff and pivot is used with the wheels in order to use a cap jewel or cap stone together with the hole jewel. In this type of construction, the hole jewel, instead of being left open and covered only by the case, is capped by another jewel of the same size without a hole, embedded in another plate attached to the movement above the plate containing the hole jewel. In a 17-jewel watch, only the balance wheel contains cap stones as well as hole jewels, but in a 21-jewel watch the four hole jewels at the bottom of the train are also capped by cap stones.

When cap jewels are used, a different construction of the staff, pivot and hole jewel is used, so that the end thrust is taken by the end of the pivot touching the cap stone rather than the shoulders of the staff bearing against the hole jewels. In this type of construction the pivot point and staff are conical and the hole jewel is concave where the pivot enters the jewel, so that the shoulder of the staff never touches the hole jewel, but

Findings

55 F.T.C.

instead the conical pivot passes through the hole and its tip touches the cap jewel when end thrust occurs. Respondent's device, which has been patented by the U.S. Patent Office, consists of a small metal plate containing four stones of identical construction and material as the cap jewels found in regular 17-jewel and 21-jewel watches. Respondent's device has been so designed that it fits exactly over the train bridge of the 17-jewel watch, and is attached thereto by using the same screwholes which hold the train bridge in place. The four stones in the device are so positioned as to be mounted directly under the hole jewels in the train bridge, in the same manner as the cap jewels in a regular 21-jewel watch. However, the stones in the Resevoil device do not touch anything because there is a minute space or gap between the concave side of the hole jewel and the bottom of the stone. On the other hand, as previously described, in a regular 21-jewel watch or the balance staff of a 17-jewel watch, the cap jewel takes the end thrust of the pinion and hence is in contact with the point of the pivot when this occurs.

The regular 17- and 21-jewel watch has three additional jewels not like those described above which are members of the escaper. Two of these are called pallet jewels and the third is called the roller jewel. The pallet jewels are shaped like bricks. In the watch movement, they alternatively strike the curved teeth of the escape wheel. The roller jewel is a semicylinder. Its function is to swing the pallet back and forth every time the balance wheel swings back and forth. Each of these three jewels contact moving parts, although intermittently, at points of wear.

Rene Marie Fiechter, a witness for the respondent and co-owner of the Resevoil patent, testified that jewels are used as a roller and in the pallet fork as pallets: "Because the surface finish of those jewels can be engineered and obtain to real high glossy surfaces and their hardness is such that they don't wear. Therefore, they present themselves to the teeth in which they are engaging in the lever kind or the end of the pallet, always in the same physical position due to absence of wear. Therefore, the physical position and relationship of one to the other remaining the same, the transmission of force from the escape wheel to the balance wheel will remain the same. Any change in that relationship due to wear on those jewels would immediately affect the amount of force transmitted to the balance wheel; therefore, cause it to oscillate more or less, but differently,

1770

Findings

therefore changing the isochronism of the whole oscillating system."

It follows, therefore, that every jewel in regular 17- and 21-jewel watches comes in contact with a moving part at a point of wear. The hole jewels which are journal bearings and the cap jewels which are thrust bearings clearly serve in this capacity. The pallet jewels and roller jewels likewise contact moving parts at points of wear as above explained. The experts who testified on the subject, although they may have used different terminology, all appeared to agree that every jewel in the traditional 17-jewel and 21-jewel watch is a friction bearing jewel in the sense that they contact a moving part at a point of wear. They likewise agreed in essence that the Resevoil stones are not friction bearing jewels because the properly installed Resevoil stone does not touch a moving part.

Some of the experts in explaining the need for jewels in watches testified in effect that cap jewels are necessary not only to reduce wear or friction but also to retain oil. One such expert was Jacques Ditesheim, sales manager for the Movado Watch called by counsel in support of the complaint. On cross-examination he testified:

Q. In other words, your cap jewels [in regular 21 jewel watches], the only real useful function that they have is the retention of oil?

A. Positively no. They are absolutely needed for friction.

Q. Friction?

A. Yes, as well as eliminating the end shake of the part on which they are fastened.

Another witness who testified that a cap jewel serves an end thrust function and as a lubricating factor was Victor Huff, a watch importer, called by the respondent. But Huff on cross-examination testified as follows:

Q. So in every instance where you have a jewel, except the Resevoil jewel . . .

A. (Interposing) Yes.

Q. You have a contact of a moving part of the watch upon a hard surface?

A. Exactly.

Q. Is that correct?

A. Yes.

The clear weight of the evidence in this record is that the industry looks upon a jewel as a small, hard, highly processed gem placed in a watch movement to contact a moving part at a

Findings

55 F.T.C.

point of wear. Various experts called by both counsel in support of the complaint and the respondent in effect so testified.

The following are some examples:

Carl Pepla, a watchmaker, testified that every jewel in a watch is a friction bearing jewel, even the pallet and roller jewels, although he said they are not bearings, technically speaking.

Harry Kalquist, vice president of the Moser Jewel Company, a witness for the respondent, testified that all the jewels in a 21-jewel watch are bearings, including the pallet and roller jewels. His reason for calling the roller stone a bearing, for instance, was that it is a hard surface in a place where it is necessary.

John Van Horn, director of research for the Hamilton Watch Company, testified that a jewel in a watch serves as a bearing using the term in the dynamic sense. In respect to watches, he said, the term "jewel" without exception refers to the acceptance of a moving load.

In addition, the record contains certain other evidence relative to the meaning of the word jewel in the watch trade.

For instance, Respondent's Exhibit 1, a booklet copyrighted by the Swiss Federation of Watch Manufacturers, contains the following:

These synthetic watch jewels are worth only pennies apiece. Yet their value is incalculable in terms of what they do in a fine watch. For just as oil cuts down friction and keeps wheels turning—So the jewels in a watch are used to protect the moving parts against wear and friction. In a fine watch, the jewels are really synthetic bearings, located at the most vital and critical points of action—to assure greater accuracy.

It is found and concluded that, as used in the watch industry and trade, a jewel must serve a mechanical function as a frictional bearing before it is entitled to be represented as a "jewel" and that the jewel-like stones in the Resevoil device do not serve such a function. The representation by respondent of his Tornay watches as 21-jewel watches, therefore, is false and deceptive.

5. Advertisements disseminated by the respondent and furnished by the respondent to retailers and distributors to advertise Tornay watches equipped with the Resevoil device contain the statement that the device "provides twice as much oil to the vital parts, assuring longer life expectancy * * *."

Respondent has thereby represented that the device provides twice as much oil to the vital parts of the watch. Counsel for respondent has stipulated that the Resevoil device does not pro-

1770

Conclusions

vide twice as much oil to the vital parts of the watch, and accordingly it is concluded and found that this representation is false, misleading and deceptive.

Respondent has also represented by the aforesaid advertising statement, as alleged by the complaint, that his device significantly enhances the amount of oil provided to the vital parts of a watch and assures longer life expectancy. As to the issue raised by this allegation, the evidence in the record is in substantial conflict. Under the circumstances, there is no sound basis for deciding the question. It is therefore concluded that counsel in support of the complaint has failed to establish by reliable, probative and substantial evidence that respondent falsely represented that his device provides a significant increase in the amount of oil to vital parts of the watch and assures its longer life expectancy.

6. The acts and practices of respondent hereinabove found have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to such representations and thereby induce the purchase of substantial quantities of respondent's product. As a result, substantial trade in commerce has been and is being unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce and engaged in the above-found acts and practices in the course and conduct of his business in commerce, as "commerce" is defined in the Act.

2. The acts and practices of respondent hereinabove found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Act.

3. As a result of the above-found acts and practices of respondent, substantial injury has been done to competition in commerce.

4. This proceeding is in the public interest and an order to cease and desist the above-found unlawful practices should issue against respondent.

5. Respondent has not violated the Act, as alleged in the complaint, by representing that his device significantly increases the amount of oil to vital parts and assures longer life expectancy thereof.

Order

55 F.T.C.

ORDER

It is ordered, That Respondent Allen V. Tornek, individually and trading as Allen V. Tornek Company, or under any other name, 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 watches in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the usual and regular retail prices of respondent's merchandise when such amounts are in excess of the prices at which such merchandise is usually and regularly sold at retail;

2. Making any false statement or representation or engaging in any deceptive practice or plan which would provide retailers of respondent's merchandise with a means of misrepresenting their usual and regular retail prices;

3. Representing, directly or by implication, that the Resevoil device in his watches, or any other device of the same or similar construction or operation, provides twice as much oil to the vital parts of the watch; and

4. Representing, directly or by implication that his watches, sold under the name "Tornay" or any other name or names, contain a designated number of jewels such as "21 Jewels," unless said watches actually contain the stated number of jewels, each and every one of which serves a mechanical purpose as a frictional bearing.

It is further ordered, That the allegation of the complaint, that respondent falsely represented that his device significantly increased the amount of oil to vital parts of the watch and assured longer life expectancy thereof, be, and it hereby is, dismissed.

It is further ordered, That respondent's motions to strike certain testimony from the record and to dismiss paragraphs five through ten, inclusive, of the complaint, and a general motion to dismiss the entire complaint, all filed July 15, 1958, be, and they hereby are, denied.

It is further ordered, That respondent 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

1770

Opinion

form in which he has complied with the order to cease and desist.

Commissioner Tait not participating.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The complaint, under Section 5 of the Federal Trade Commission Act, charges respondent with the false advertising of watches. Both counsel supporting the complaint and respondent appeal from portions of the initial decision and order, and have presented their views in written briefs and in oral argument. Briefs as amici curiae were also filed by Hamilton Watch Company and Elgin National Watch Company; Bulova Watch Company, Inc.; and American Watch Association, Inc.

Respondent sells watches under the brand name of Tornay. His volume of business is substantial. He is engaged in commerce within the meaning of the Federal Trade Commission Act, and is in substantial competition with others similarly engaged.

The issues involve the sale of watches represented as Resevoil 21-jewel watches. Respondent imports 17-jewel watch movements from Switzerland. He attaches to such movements a patented device, consisting of a metal plate containing four gems, which he calls "jewels." The movements are then put in cases and sold to jobbers and retailers. Imprinted on the face of the watches are the words "Tornay 21 Jewel." Respondent in the past has also furnished his dealers with material to be used in advertising his watches, which advertising contained the following or similar statements:

RESEVOIL 21 JEWELS

including
4 Oil Reserve

The Revolutionary RESEVOIL Patented TORNAY Watch Feature that insures DOUBLE-LIFE for your watch.

TORNAY

21

JEWELS

Including 4 Oil Reserve.

This lovely watch * * * features a new patented invention that provides twice as much oil to the vital parts, assuring longer life expectancy * * * .

It's no ordinary jeweled watch—we have added 4 oiled reserved jewels to a precision 17-jewel watch mechanism to give you 21 fully functional jewels.

21 JEWEL WATCHES

Including 4 oil reserve

Opinion

55 F.T.C.

Respondent's Appeal

Respondent challenges the findings of the hearing examiner in regard to, first, claimed fictitious pricing, and, second, the claim that the Resevoil device provides twice as much oil to the vital parts of the watch, thus assuring a longer life expectancy.

The facts as to fictitious pricing are not in substantial dispute. Respondent stipulated that he supplied to retail customers, price tags for his watches, varying from \$19.75 to \$125. It appears from the evidence that such prices were not the usual and regular prices at which the watches were sold, but were often greatly in excess of such prices.

Respondent also stipulated that the Resevoil device does not provide twice as much oil to the vital parts of the watch. The hearing examiner found:

This representation is false, misleading, and deceptive. Respondent contended that his advertising and pricing had been discontinued more than a year prior to the issuance of the complaint. However, there are no "unusual" circumstances here which would warrant refusal to issue a cease and desist order, a decision purely within the discretion of the Commission.

We agree with the findings and conclusion of the hearing examiner as to the respondent's appeal and such appeal is accordingly denied.

Appeal of Counsel Supporting the Complaint

This appeal challenges the findings and order of the hearing examiner in dismissing the complaint as to the following allegations:

1. That the respondent falsely represented that certain watches sold by him are 21-jewel watches; and
2. That respondent falsely represented that the Resevoil device provides a significant amount of oil to the vital parts of the watch.

It is not disputed that respondent represents his watches to be 21-jewel watches. The important question is as to the meaning of the term "jewel" as understood in the watch industry and trade.

It is the view of counsel supporting the complaint that a "jewel" must serve a mechanical purpose as a frictional bearing, that is, each jewel must provide a mechanical contact at a point of wear.

In the initial decision, the hearing examiner said:

1770

Opinion

While this definition of a jewel was assumed in the complaint, the record does not substantiate it. None of the witnesses called in support of the complaint during the case-in-chief testified that a watch jewel must serve a mechanical purpose as a frictional bearing in order to be classified as a "jewel," but instead testified that the four jewels in respondent's device served no useful purpose and were in effect useless when attached to the watch.

Considerable evidence was introduced on the general subject of watch construction.

For example, Carl Pepla, a watchmaker, testified in substance that the four "jewels" in the Resevoil device do not serve as frictional bearings and serve no functional purpose; that in the traditional 17-jewel watch, there are 17 jewels, every one being a friction bearing jewel.

Jean-Pierre Savary, connected with the Watchmakers of Switzerland Information Center, New York, testified:

In connection with oil, first of all, the main part of the friction in a watch—I mean, to avoid friction in a watch, is done by jewels, first, because they have a hard polished surface and they are placed in the main bearing points. An addition of oil, like in any bearings, I would think, would make these bearings to run better, but I have no other opinion than that.

Bernhard Gottfurcht, watchmaker, testified that in the traditional 17-jewel watch, there are no jewels that are not friction bearing.

The testimony of Jacques Dittesheim, sales manager of Movado Watch Company, was to the same effect with the addition that the cap jewels serve a double function. "They serve a function for friction as well as a reservoir for oil."

C. Harry Kalquist, vice president and treasurer of The Moser Jewel Company, testified that in the normal 21-jewel watch, all 21 jewels are bearings; a bearing is a hard substance that a pivot rides in or on; the function of a bearing is to reduce wear and to lubricate; the common purpose of a jewel bearing is to stabilize the friction at the point of its use.

Victor Huff, a watch importer, agreed that in every instance where you have a jewel, except the Resevoil jewel, you have a contact of a moving part of the watch on a hard surface.

John A. Van Horn, director of research for the Hamilton Watch Company, testified: "A jewel serves as a bearing and I am using that word in its dynamic sense. The dictionary definition of bearing, of course, covers several meanings of the word, including static cases, which is the one which describes the function of bridge pilings which serve there as a bearing accepting a

Opinion

55 F.T.C.

static load. In respect to watches, the term without exception—that is, the term “jewel”—refers to the acceptance of a moving load.”

Each of these witnesses was testifying as an expert as to the functions of a jewel in a watch, as it has been developed in the watch industry. The purport of their testimony is that a jewel is a small, hard, highly processed gem, placed at a strategic point in a watch movement to contact a moving part. Its purpose is to reduce the problems incident to friction. Its value depends on its location at a point where it will contact a moving part.

Some jewels contact the moving part, not constantly (as a hole jewel does) but intermittently, as the movement requires. Consequently, some witnesses expressed the view that certain jewels, such as pallet jewels, are not jewels in the strict sense. The weight of the evidence, however, is contrary to this view. In any event, it is not material in this case because it is undisputed that the so-called Resevoil jewels, at no time contact a moving part.

The testimony of the witnesses as to the functioning of jewels and as to the meaning and use of the word “jewel,” both in the industry and by the Government, is confirmed by other evidence in the record.

Respondent's Exhibit 1 is a booklet prepared by The Watchmakers of Switzerland, entitled, “What Difference Does the Number of Jewels Make.” The booklet contains the following:

These synthetic watch jewels are worth only pennies apiece. Yet their value is incalculable in terms of what they do in a fine watch. For just as oil cuts down friction and keeps wheels turning—So the jewels in a watch are used to protect the moving parts against wear and friction. In a fine watch, the jewels are really synthetic bearings, located at the most vital and critical points of action—to assure greater accuracy.

Respondent's Exhibit 2, being a paragraph of a publication of the Swiss Watch Federation of Switzerland, is as follows:

Raw jewels alone cost little; it's their incredibly precise finish and their perfect positioning in the watch that give them value, and that makes your watch run so dependably. And, while a certain number of jewels are necessary at vital points, you should know that an increase beyond this number does not always mean an increase in watch quality.

19 U.S.C., Section 1001, paragraph 367, relates to the imposition of custom duties on watch movements, time keeping instruments, etc. The rates fixed vary to some extent with the number of jewels.

1770

Opinion

Paragraph 367 (b) provides:

All the foregoing shall have cut, engraved, or die sunk, conspicuously and indelibly on one or more of the top plates or bridges, the name of the country of manufacture * * * the number of jewels, if any, serving a mechanical purpose as frictional bearings.

Bulova Watch Co. v. United States, 21 Court of Customs and Patent Appeals 156 (1933), involved the construction of a portion of the Tariff Act of 1930, paragraph 367, which provided that in determining the applicable duty, the term "jewel" includes "substitutes" for jewels. The claimed substitute was a metal bushing affixed to the watch movement, in place of the usual stone jewel, and which could be removed and replaced when wear made that necessary. The Court in reversing the trial court, quoted four findings, No. 3 of which was as follows:

(3) That the functions of each [meaning a jewel and a metal bushing] are precisely the same in that each is removable, each has provision for lubrication and for taking up the "end shake" and that each operates to make the watch movement more readily adjustable.

The Court then said:

We are inclined to agree with the foregoing four findings—construing the third finding as not stating all the functions of a jewel but only those which are similar to the function of a bushing, but we are of the opinion that one additional fact should be considered, a fact not contradicted in the testimony and of which we may take judicial notice by reason of its being a matter of common knowledge, and that is that the only reason that a jewel is ever used in a watch movement in preference to a pivot bearing of metal is because of the hardness of the jewel and the smaller amount of friction encountered in its use.

After quoting several dictionary definitions, the Court concluded:

The only quality that causes a jewel to be selected (in preference to ordinary metal bushings) is its hardness as compared with the metal of the plate, and its consequently reduced friction, and a device that does not possess this quality cannot be held to be a substitute for a jewel, even though in its use, it may perform some of the functions of a jewel.

Some of the witnesses called attention to the fact that a jewel in a traditional 17-jewel movement may perform a secondary function having to do with lubrication. There was also testimony that the Resevoil device performed this function even better than the ordinary jewel. However, to qualify for the term "jewel," as understood by the industry, it is not enough that it serve some useful function. It must perform the function with which the word "jewel" has long been associated.

Opinion

55 F.T.C.

We conclude that:

(1) As used in the watch industry and trade, a jewel must serve a mechanical function as a frictional bearing before it is entitled to be represented as a "jewel."

(2) The so-called jewels in the Resevoil device do not serve such a function.

(3) The representation by respondent of his Tornay watches as 21 jewel watches is false and deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The appeal of counsel supporting the complaint as to this issue is granted. Order will be entered accordingly.

Counsel supporting the complaint next challenges the hearing examiner's finding that the respondent did not violate the Federal Trade Commission Act by representing that the Resevoil device significantly increases the amount of oil to vital parts and assures longer life expectancy thereof.

Considerable evidence, pro and con, was introduced on the subject.

The hearing examiner found:

It is concluded and found that counsel in support of the complaint has failed to establish by preponderance of the reliable, substantial and probative evidence that respondent falsely represented that his device provides a significant increase in the amount of oil to vital parts of the watch and assures longer life expectancy of said watches.

We agree with this finding and the appeal of counsel supporting the complaint as to this issue is denied.

It is directed that an order issue accordingly.

Commissioner Tait did not participate in the decision of this matter.

Decision

IN THE MATTER OF
MALVIN & SHAFRAN, INC., ET AL.

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

Docket 7307. Complaint, Nov. 18, 1958—Decision, May 13, 1959

Consent order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements, by advertising in letters to a customer which represented prices of fur products as reduced from purported regular prices which were in fact fictitious, and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Eugene Kaplan for the Commission.

Benjamin Held, Esq., of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 18, 1958, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 18, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of February 26, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Malvin & Shafran, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 706 South Hill Street, Los Angeles 14, Calif.