

IN THE MATTER OF
SWISS WATCH CASE CORP. ET AL.

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

Docket 7040. Complaint, Jan. 15, 1958—Order, July 24, 1959

Order dismissing, as unproven by the record, complaint charging a Milford, Conn., importer and assembler of watch cases with falsely implying Swiss manufacture and failing to disclose Chinese origin, and with misrepresenting the cases by stamping thereon such inscriptions as "Cased and timed by precision watch craftsmen," "water resistant," "stainless steel back," etc.

Before *Mr. Frank Hier*, hearing examiner.

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

Bernblum & Clarke, of Milford, Conn., and *Mr. B. Paul Noble*, of Washington, D.C., for respondent.

Cummings, Sellers, Reeves & Conner, of Washington, D.C., for General Time Corp., *amicus curiae*.

OPINION OF THE COMMISSION

By *ANDERSON, Commissioner*:

The respondents in this proceeding are a New York corporation, the address of which is Milford, Connecticut, and two individuals who formulate and direct its policies and serve as its officers. In the initial decision filed by him, the hearing examiner held that the charges of misrepresentation as to the origin of respondents' watch cases were sustained by the evidence and that others were not so supported. The respondents and counsel supporting the complaint have filed cross-appeals from the rulings adverse to their contentions at the hearings.

The name of the corporate respondent, Swiss Watch Case Corp., is stamped into the metal on the inside of the backs of the watch cases sold by the respondents. The complaint charges that the words "Swiss Watch," as thus inscribed, engender erroneous beliefs that such cases are made in Switzerland. The hearing examiner in ruling this charge sustained held that the corporate name inscription had the capacity and tendency to mislead prospective purchasers into beliefs that the watches so encased or the cases were imported from Switzerland.

The respondents do not sell their watch cases direct to the general public, but market them to watch assemblers who, after placing watch movements in them, sell the completed watches to retailers for distribution to the public. The components of respondents' watch cases include the back, the front or bezel containing the crystal, and a crown. Many of the respondents' cases contain backs and bezels imported from Hong Kong, China, in finished form. On the inside of the backs of many of them, the name Hong Kong is stamped underneath the words "Swiss Watch Case Corp." On others, the stamping Hong Kong does not appear, but the parts are shipped by respondents to the assemblers wrapped in paper imprinted with the words "Made in Hong Kong." Still other cases distributed by respondents are made from backs and bezels imported from Hong Kong in unfinished form for plating and further processing in this country. Many of such semi-finished parts are stamped

in red ink as originating in Hong Kong, which inscription frequently is obliterated during subsequent processing. These backs similarly are stamped on the inside by the respondents with the corporate name, and the Hong Kong inscription appears on some, but not others.

Determinations as to the likelihood of purchaser deception resulting from the word "Swiss" in the name inscription must be made with due regard to record matters bearing on the inscription's manner of use. Inasmuch as such inscription appears on the inside of the backs of the watch cases, it is open to the view by prospective watch purchasers only in the event of the back being removed. Being of the so-called waterproof type of construction, the cases contemplate a tighter bond between back and bezel than other types of cases and they apparently receive special machining for that purpose. A special tool is required for opening or closing a properly cased watch of this type.

The inscriptions on the cases received as exhibits appear in very small print and in stamping relatively dim and indistinct. In this connection, the hearing examiner observed at one point in the proceedings that he had been unable to read the words "Swiss Watch" on exhibits theretofore examined by him; and it was doubtless in recognition of discernment difficulties that counsel furnished a jeweler's loupe to assist our inspection of the exhibits during oral argument before the Commission. Furthermore, no testimony was introduced in support of the complaint's companion charge that a preference exists among a segment of the purchasing public for watches manufactured in their entirety in Switzerland or in the United States, together with a corollary prejudice against articles manufactured in Hong Kong. Nor was any evidence received suggestive of an awareness by retailers of the name inscription or indicating that watches for which respondents' cases are used are ever disassembled by retailers for purchasers' inspection. The present posture of the record therefore is such as to preclude informed determinations of whether the word "Swiss" in the concealed inscription has been used as a deceptive instrumentality as charged in the complaint.

The hearing examiner further held that irrespective of any public preferences or prejudices which may exist as between domestic and imported merchandise, the public is entitled, as a matter of law, to be informed by sellers' appropriate markings as to the foreign origin of an article being offered for sale. He accordingly ruled that respondents' failure to so mark their cases was unlawful; and the initial decision's order requires the respondents to cease and desist

from failing to reveal conspicuously and indelibly on the cases, or any part thereof, the country where such imported case or imported part was made.

In opposing respondents' appeal, counsel supporting the complaint argues that certain prior decisions¹ of the Commission afford sound legal basis for the above rulings and order. Such cited cases involved the distribution of sun glasses, imitation pearls and sewing machines composed in substantial part or wholly of components which were imported. However, those holdings in each instance were pursuant to specific allegations duly supported by probative evidence that members of the purchasing public assume that articles offered for sale produced in whole or in major part of imported materials are of domestic manufacture unless conspicuously labeled and marked to the contrary. No such allegation is included in the instant complaint nor was proof in that vein received here. In those matters also, the Commission, on the basis of record evidence, found that a preference existed among the consuming public for domestic over foreign articles in the categories of merchandise there involved. Proof in support of the instant complaint's allegation of consumer preference was not introduced here, however.

As also noted previously, in addition to those imported as finished cases, many of respondents' cases have contained imported parts further processed and finished in this country. The testimony relating to respondents' processing activities on the latter category of parts suggests this work constitutes 40% to 50% of the value of the completed case. Respondents' cases are sold in instances to watch assemblers for fifty cents per case or less. Whether their cases constitute substantial rather than relatively inconsequential components of the completed watches from a value standpoint is not disclosed by the record. In these circumstances, the contentions of counsel supporting the complaint that the Commission properly may take official notice of a long standing preference by the American public for domestic made and Swiss made watches over watches imported from other countries must be rejected as not controlling to decision; and his concept that failure to disclose foreign origin is unlawful in all merchandising situations similarly lacks sound legal basis. We accordingly deem the record insufficient for informed decision of the issues presented by respondents' appeal insofar as they relate to the initial decision's requirements for disclosure of foreign origin.

¹ *Lucian V. Segal, trading as Segal Optical Co.*, 34 F.T.C. 218 (decided November 26, 1941); *L. Heller & Son, Inc., et al.*, 47 F.T.C. 34 (decided August 25, 1950); *Standard Sewing Equipment Corp., et al.*, 51 F.T.C. 1012 (decided May 2, 1955).

The appeal of counsel supporting the complaint excepts to the hearing examiner's rulings dismissing certain charges for failure to establish a *prima facie* case. The backs of respondents' watch cases are composed of stainless steel and inscribed on the outside with the words "Stainless Steel Back." The cases, however, contain no markings expressly stating that the bezels are composed of base metal. Some of them are coated with chrome and others are flashed with a yellow color containing gold, which bezels allegedly simulate silver or gold in appearance. Considering that the backs are marked as stainless steel backs and not solely as stainless steel, we share in the hearing examiner's views that there has been no record showing of likelihood that purchasers buy watches encased in respondents' wares under mistaken beliefs that the bezel component likewise is stainless steel.

The finished case exhibit referred to in the appeal brief of counsel supporting the complaint as flashed with a thin coating of gold has various markings on the back, including "Base Metal," "20 Micron" and "Stainless Steel Back." Assuming, but not however deciding, that an issue in that regard is presented under the pleadings, the initial decision's conclusion of failure of proof concerning the bezels being passed off as gold bezels accordingly appears free from substantial error. Also rejected are counsel's exceptions to the like rulings concerning the failure to mark the chrome plated bezels.

The initial decision's dismissal of the charges relating to the inscription "Cased and Timed by Precision Watch Craftsmen" and of alleged misrepresentation concerning the capacity of the watch cases to resist moisture also was proper. The appeal of counsel supporting the complaint accordingly is being denied.

Our action in granting respondents' appeal is based in part on the fact that informed decision on the issue relating to deception through silence or failure to disclose the country of origin on watch cases and component parts is not possible on the present record. Doubts can be reasonably entertained if such issue or those relating to passing off of the bezels as gold or silver were adequately raised by the pleadings. We have power to amend complaints when warranted and to remand proceedings to hearing examiners for reception of such additional evidence as may be necessary to provide adequate bases for informed determinations of questions presented for review. This is a costly and time-consuming procedure, however. Moreover, there is no express showing here that the scope of respondents' commercial activities is such that continuation of these proceedings would serve the public interest. In the situation thus presented, the case is being dismissed without prejudice to the right

Decision

56 F.T.C.

of the Commission to institute further proceedings or take such further action in the future as may be warranted by then existing circumstances.

Chairman Kintner and Commissioner Kern did not participate in the decision of this matter.

FINAL ORDER

Counsel supporting the complaint and counsel for the respondents having filed their cross-appeals from the hearing examiner's initial decision in this proceeding and this matter having come on to be heard upon the record, including the brief filed by General Time Corporation as *amicus curiae*, and the oral arguments of counsel; and

The Commission, for reasons stated in the accompanying opinion, having granted the respondents' appeal and denied the appeal of counsel supporting the complaint:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings or take such further action in the future as may be warranted by then existing circumstances.

Chairman Kintner and Commissioner Kern not participating.