

IN THE MATTER OF

SAMUEL I. VULCAN DOING BUSINESS AS
BRANTON WATCH COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 7617. Complaint, Oct. 19, 1959—Decision, June 11, 1960*

Order requiring a New York City importer of watch movements from Switzerland which he assembled with cases from separate sources, to cease preticketing said watches, and furnishing his customers, with false price tickets representing the retail sales price to be much more than was the fact.

Mr. Ames W. Williams supporting the complaint.

Respondent, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint issued in these proceedings on October 19, 1959, charges the respondent, Samuel I. Vulcan, an individual, trading and doing business as the Branton Watch Company, with a violation of the Federal Trade Commission Act by preticketing watches which respondent sells in interstate commerce, so as to furnish customers the means and instrumentalities by which the purchasing public may be misled as to the regular and usual retail prices of respondent's watches. A prehearing conference was convened on December 18, 1959, in New York, New York, for the purpose of ascertaining whether the hearings in this matter might not be expedited. Thereafter, hearings were set for New York, New York, and other cities, but as a result of an agreement as to what the testimony in the other cities would be, said hearings, other than those in New York, New York, were cancelled.

The record in this case consists of 58 pages, and Commission's Exhibits 1 through 20-P were offered and received in evidence. The respondent Samuel I. Vulcan, stated to the hearing examiner that he is a licensed attorney. He represented himself. No answer was filed by the respondent.

Testimony in this proceeding was taken on January 25, 1960. At the conclusion of that hearing respondent stated, "It seems to me it would almost be pointless to put in any sort of defense. I

don't know what it can possibly be. We can either close it or sign a consent of some sort, because actually I see no—from what I understand—off the record?" (Tr. p. 57) As a result of that statement, respondent was requested to notify counsel supporting the complaint, and the hearing examiner, if he desired to put in any defense, and February 25, 1960, was set for such additional hearing. On February 16, 1960, respondent wrote a letter to the hearing examiner stating, *inter alia*, "After giving this considerable thought, I have come to the conclusion that any evidence I could present would in the main be in the nature of similar testimony produced by the Federal Trade Commission and in the cross-examination of the witnesses produced in its behalf.

"In view of the foregoing I have decided not to produce any evidence in my behalf and to let the record stand as is. I would like, however, that I be granted a reasonable period, say about 30 days in which to present my findings and conclusions for your decision.

"I assume that the hearing set for February 25th will be cancelled and that you will enter an order to such effect. May I ask that this letter serve as a request on my part for time to submit findings and conclusions."

Thereafter, by order dated February 18, 1960, the examiner cancelled the hearing set for February 25, 1960, and fixed March 18, 1960, as the time for all parties to file with the hearing examiner proposed findings of fact, conclusions of law, and recommended order.

On March 18, 1960, the respondent wrote the hearing examiner, *inter alia*, "I have given this matter considerable thought as a result of the hearing held and the interpretations of the facts and law as applied in my case."

"Accordingly, I have decided to sign the consent order, handed me earlier by Mr. Williams, and enclose it herewith so signed. I understand that this is in order."

Thereafter, on March 21, 1960 the hearing examiner transmitted to counsel supporting the complaint a photostatic copy of respondent's letter of March 18, 1960 and the Agreement for Consent Cease and Desist Order which had been enclosed with that letter. This agreement had been signed by respondent, but had not been signed by counsel supporting the complaint, or approved by the Director, or the Assistant Director of the Bureau of Litigation. On March 25, 1960, counsel supporting the complaint returned the proposed Agreement for Consent Cease and Desist Order to the hearing ex-

aminer, with a memoranda stating, "I am instructed to state that it is the considered opinion of the Bureau of Litigation that the decision set forth in Dockets 6354, 6375 and 6520 is not controlling in the premises and that the requirements of Rule 3.25 of the Rules of Practice and Procedure should be observed.

"Accordingly, there is returned herewith the signed agreement by respondent Vulcan which was forwarded with your above-cited memorandum, without the approval of the Bureau of Litigation."

In view of the fact that the Bureau of Litigation, Federal Trade Commission, has elected not to accept the Agreement Containing Consent Order to Cease and Desist, which was signed by the respondent on March 18, 1960, the hearing examiner is issuing this, his formal initial decision based upon the record, including the exhibits which are received in evidence.

There is not in this proceeding, as in almost every other contested proceeding before this Commission, an "issue" which may be articulated, because the respondent has stated in the record quoted above, "It would almost be pointless to put in any sort of defense." (Tr. p. 57) Respondent's letter of March 18, 1960, expressed the wish that the matter could be disposed as in other proceedings where an agreement containing a consent order to cease and desist has been accepted by all of the parties.

By order dated April 20, 1960, the hearing examiner made respondent's letters of February 16, 1960, and March 18, 1960, a part of the record in this proceeding in lieu of respondent's proposed findings of fact and conclusions of law. In view of the Bureau of Litigation's unwillingness to accept respondent's proffered Agreement for Consent Cease and Desist Order, the hearing examiner in this, his initial decision, makes the findings of fact which he deems to be justified by the record, and enters an order granting the relief requested by counsel supporting the complaint.

Findings requested by counsel which are not specifically adopted and incorporated herein are rejected and refused. The fact that the examiner has not incorporated in this decision nor rejected, nor dismissed specifically, evidence which is in the record should not be construed as indicating that such evidence has not been fully considered by the examiner in preparing this initial decision. It indicates merely that the evidence which the examiner has incorporated in his findings of fact is sufficiently preponderant, reliable, probative and substantial to support the order being entered.

FINDINGS OF FACT

Counsel supporting the complaint has proven the essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record.

Respondent, Samuel I. Vulcan is an individual trading and doing business as the Branton Watch Company, with its office and principal place of business located at 580 Fifth Avenue, New York, New York. Respondent is now, and since November 1950 has been engaged in the assembly and sale of watches, the movements of which are imported from Switzerland. In the course and conduct of his business, the respondent causes, and since November 1950 has caused his watches, when sold, to be shipped from his place of business in New York to purchasers thereof located in various states of the United States, and respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said watches in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of and over the respondent, as well as the subject matter of this proceeding.

In the course and conduct of his business respondent is in competition with firms and individuals likewise engaged in the sale of watches in commerce.

Respondent has testified, and the examiner finds that the respondent imports his watch movements from Switzerland, purchases the watch cases from separate sources, assembles the completed watch in New York, New York, and ships the completed watch, when sold, in interstate commerce throughout the states adjacent to and bordering New York. Respondent's gross sales for the year 1958 were approximately \$78,000. The gross sales for the year 1959 were about the same amount, or possibly a couple of thousand dollars less.

At the time that respondent assembles his watches and packages them for sale, he affixes to them price tags, some of which are in evidence as Commission's Exhibits 2-A through 2-J inclusive, showing varying prices and bearing the name "Branton" on the tag. Prices of \$49.95, \$59.50, \$71.50, \$87.50, \$100, \$112.50, \$125, \$150 and \$200 appear on different watches. These watches are advertised for sale by merchants through the media, among others, of catalogues, such as Commission's Exhibit 3, 4, 5, 19 and 20 in evidence. Page No. 4 of CX 3 is illustrative of the manner in which the preticketing by respondent of his watches operates. On that page, a watch which is preticketed by respondent at a price of \$87.50 is actually

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sold at a dealer's wholesale price of \$15.35. Some other advertised, preticketed, and dealers' prices for respondent's watches are:

Watch model designation	Preticketed price	Dealers' wholesale price
Aqua Maid.....	\$77.50	\$18.00
Golden Maid.....	100.00	22.50
Audrey.....	100.00	17.75
Nanette.....	100.00	18.75
Golden Girl.....	100.00	18.75
Neptune.....	71.50	14.75
Golden Neptune.....	87.50	18.75
Bruce.....	87.50	15.35
Brant-o-Matic.....	100.00	21.00
Harvard.....	100.00	17.80
Gregory.....	150.00	31.00
Lady Laura.....	100.00	18.75
Mr. & Mrs. Harvard.....	150.00	33.00
Lord Inwood.....	100.00	18.75
Diamond Lynn.....	112.50	20.75
Diamond Phyllis.....	150.00	37.50
Diamond Sue.....	137.50	28.50
Diamond Gloria.....	200.00	59.50
Diamond Prince.....	200.00	39.50

The price billed to the Conelle Products Company for the Aqua Maid was \$15.50, for the Gregory was \$22.50, for the Diamond Gloria was \$40.00 and for the Diamond Phyllis \$27.00. This list does not summarize all the price evidence, but is sufficiently representative to demonstrate the tremendous discrepancy between the price which respondent's customers pay respondent for the watches, the price at which the watches are sold, and the false, misleading and deceptive price which respondent places upon the watches by respondent's preticketing practices.

Respondent not only pretickets the watches, but he furnishes glossy prints of the watches for the sales catalogues, together with the descriptive sales matter. On separate sheets respondent makes up a listing for his customer with the name of the watch, the listing, list price, suggested price, and their cost. (Tr. p. 10) At the time of CX 3, a catalogue of Conelle Products, was issued, respondent's watches were sold by respondent's customers on the basis of 20% mark up over cost. (Tr. p. 13)

As an example, a watch preticketed by respondent at \$71.50 (Item No. W332A), actually sold for \$22.50.

Maurice Elk, one of the respondent's customers testified that he did not ever sell respondent's watches at the prices preticketed on them, but as an example, sold for \$18.50 a watch which was preticketed at \$87.50.

Respondent stipulated on page 55 of the record that if Robert Marcus of the H. and H. Distributing Company, 2021 Prospect Avenue, Cleveland, Ohio; Ben Wilkoff, of Ben Wilkoff Company, 100 West Commerce Street, Youngstown, Ohio; Morris Kitman of

the G. and G. Distributing Company, 1208 Forbes Avenue, Pittsburgh, Pennsylvania; Morris B. Marcus of L. and G. Furniture and Appliance Company, 2014 Penn Avenue, Pittsburgh, Pennsylvania; and Edwin R. Krasnow of the Key Distributing Company, 601 Lysle Boulevard, McKeesport, Pennsylvania, were duly sworn and should testify in this proceeding they would testify very similarly to the manner in which Maurice Elk testified: That they sell respondent's watches by catalogue, mail, and street trade; that such watches are preticketed by respondent; and they do not sell such watches for the prices appearing on the price tags and in their catalogues, but for substantially less; that they all buy the watches direct from Branton Watch Company, with the exception of L. and G. Furniture and Appliance Company and Key Distributing Company, who purchase the Branton watches from H. and H. Distributing Company of Cleveland, Ohio. It is further stipulated, that respondent knows, at the time he sells watches to his customers, that they are going to sell them for less than the preticketed prices and knows that his customers' sales prices will represent a substantial discount from the regular price.

Respondent's practice of preticketing his watches in fact represents their sales price to be considerably more than the sale price actually is. This practice has had, and now has, and will have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public concerning the true price and the true value of respondent's watches. Respondent's false, misleading and deceptive preticketing of his watches induces the public to purchase a substantial quantity of the respondent's watches because of such erroneous and mistaken belief as to their true price. As a result thereof, trade in watches has been and is being unfairly diverted to the respondent from his competitors, and substantial injury has been and is being done to such competitors, in commerce.

By preticketing his merchandise, as aforesaid, and by furnishing his customers with false price tickets, respondent supplies the means and instrumentalities by which others may mislead the purchasing public as to the regular and retail prices of respondent's merchandise. Respondent knows at the time he pretickets his watches that they will be sold for substantially less than the price at which preticketed.

The acts and practices of the respondent in preticketing his watches at a price which he knows is not the price for which the watches will sell, but is substantially lower, is to the prejudice and injury of the public, and constitutes unfair and deceptive acts and practices and unfair methods in competition in commerce, within

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the intent and meaning of the Federal Trade Commission Act, and is proscribed thereby.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of and over the respondent and the subject matter of this proceeding;

2. The complaint filed herein states a cause of action, and this proceeding is in the public interest.

3. Counsel supporting the complaint has proved by reliable, probative, and substantial evidence that respondent, by preticketing his watches with false price tags before he sells them in interstate commerce, deceives and misleads a substantial portion of the purchasing public, and puts other persons who buy the watches from him in a position where such other persons, may mislead and deceive a substantial portion of the purchasing public, into purchasing such watches. Respondent's practices violate the Federal Trade Commission Act, and the court decisions interpreting said Act.

Inasmuch as respondent's preticketing practices are misleading and deceptive under the provisions of the Federal Trade Commission Act, and are proscribed thereby, therefore,

It is ordered, That Samuel I. Vulcan, an individual trading and doing business as the Branton Watch Company, and under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of watches, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from:

1. Representing by preticketing, or in any other manner, that any amount is the usual and regular retail price of merchandise at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made; and

2. Furnishing any means or instrumentality to others by and through which such others may mislead the public as to the usual and customary prices of respondent's merchandise.

ORDER MODIFYING INITIAL DECISION, ADOPTING INITIAL DECISION AS MODIFIED AS COMMISSION'S DECISION, AND DIRECTING THAT REPORT OF COMPLIANCE BE FILED

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission being of the opinion that the order to cease and desist contained in the initial decision is not appropriate in all respects to dispose of this matter:

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Syllabus

It is ordered, That the initial decision be, and it hereby is, modified by substituting for the order to cease and desist contained therein the following:

It is ordered, That Samuel I. Vulcan, an individual doing business as Branton Watch Company, or under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of watches, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing or in any other manner, that any amount is the usual and regular retail price of any product when such amount is in excess of the price at which such product is usually and regularly sold at retail in the trade area or areas where the representation is made; and

2. Furnishing any means or instrumentality to others by and through which they may misrepresent the usual and regular retail price of any of respondent's products.

It is further ordered, That the initial decision, as so modified, shall, on the 11th day of June 1960, become the decision of the Commission.

It is further ordered, That respondent Samuel I. Vulcan 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 form in which he has complied with the order to cease and desist.

Commissioner Tait not participating.

IN THE MATTER OF

VEE-JAY RECORDS, INC., ET AL.

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