

Complaint

IN THE MATTER OF
NORTH AMERICAN FOREIGN TRADING CORPORATION
ET AL.

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

Docket 7872. Complaint, Apr. 19, 1960—Decision, Sept. 21, 1960

Consent order requiring New York City distributors to cease selling watch bands imported from Japan, Hong Kong, and West Germany without adequate disclosure of their foreign origin—the alleged unfair practices consisting of packaging the bands between two pieces of cardboard with a clear cellophane window, which made it impossible to see the stamping of the foreign country on the inside of a link without opening and damaging the package.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that North American Foreign Trading Corporation, a corporation, and Morris Lowinger, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 in that respect as follows:

PARAGRAPH 1. Respondent North American Foreign Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 220 5th Avenue, in the city of New York, State of New York.

Respondent Morris Lowinger is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of watch bands to distributors and jobbers.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and

maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' watch bands are imported from Japan, Hong Kong and West Germany. Some of said bands are sold in bulk. The country of origin is stamped on a link on the inside of the band. In the case of some bands, this stamping is so small and indistinct that it does not constitute adequate notice to the public as to the country of origin. After receipt by respondents of said imported bands, some are packaged between two pieces of card board, the bands being exposed through a window covered by clear cellophane. A number of the individual cards are mounted on counter display cards.

The manner in which the bands are packaged makes it impossible for a prospective purchaser to see the stamping on the inside of the band except by opening and damaging the package. The country of origin of the bands is not shown on the individual cards or on the counter display cards.

PAR. 5. In the absence of an adequate disclosure that a product, including watch bands, is of foreign origin, the public understands and believes that it is of domestic origin and there are among the members of the purchasing public a substantial number who have a preference for domestic products over products of foreign origin, including watch bands originating in Hong Kong, Japan and West Germany. Many domestic watch bands sell for higher prices than imported bands, including those imported from Hong Kong, Japan and West Germany and members of the purchasing public are willing to pay these higher prices for domestic bands.

PAR. 6. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of watch bands of the same general kind and nature as that sold by respondents.

PAR. 7. The failure of respondents to adequately disclose the foreign origin of their watch bands has the tendency and capacity to lead the purchasing public into the erroneous and mistaken belief that such bands are of domestic origin and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public

and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Guggenheimer & Untermeyer, and *Mr. George Herbert Goodrich* of New York, N. Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint issued in this proceeding on April 19, 1960, against the above-named respondents charges them with violating the Federal Trade Commission Act by failing to disclose adequately the foreign origins of merchandise, particularly watch bands, imported from Hong Kong, Japan and West Germany, and sold by respondents in interstate commerce in the United States. A true copy of said complaint was served upon respondents as required by law. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated July 15, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by all of the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director, Associate Director and the Assistant Director of the Commission's Bureau of Litigation. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On July 25, 1960, the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and

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that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent North American Foreign Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 220 5th Avenue, in the city of New York, State of New York.

2. Respondent Maurice Lowinger, erroneously named Morris Lowinger in the complaint, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents North American Foreign Trading Corporation, a corporation, and its officers, and Maurice Lowinger, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of imported watch bands, or any other imported product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, or selling, any such product, unless the country of origin is clearly disclosed thereon, or in immediate connection therewith, and, if the product is packaged, such disclosure is clearly shown on the package.

KOBACKER STORES, INC.

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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 did, on the 21st day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall within sixty (60)