

IN THE MATTER OF

J. FIDDELMAN & SON, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8043. Complaint, July 15, 1960—Decision, Jan. 10, 1961*

Consent order requiring two affiliated New York City jewelry distributors to cease representing falsely in advertisements they furnished to jeweler-customers that jewelry offered for sale by said retailers consisted of respondents' overstocked merchandise, that its regular retail price was \$300 or any other fictitious amount, and that it was offered for sale at one-half the usual price; and to cease attaching to their merchandise tags bearing fictitious amounts, represented thereby as the usual retail prices.

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 J. Fiddelman & Son, Inc., and Syndicate Diamonds, Inc., corporations, and Sidney Fiddelman and Donald H. Fiddelman, individually and as officers of said corporations, 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. Respondents J. Fiddelman & Son, Inc., and Syndicate Diamonds, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal office and place of business located at 130 West 46th Street, in the City of New York, State of New York.

Respondents Sidney Fiddelman and Donald H. Fiddelman are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of jewelry to retailers for resale to the public.

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

Complaint

58 F.T.C.

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. In the course and conduct of their business and for the purpose of inducing the sale of their jewelry by others, respondents have entered into promotions with respect to their said jewelry with jewelers located in various states and have provided said jewelers with various forms of advertising for use, and which has been used, in connection with such promotions, by some of said jewelers in newspapers.

Among and typical of the advertisements furnished by respondents to jewelers and used by them as aforesaid are the following:

Getz (a Cincinnati, Ohio, retail jeweler)
EXCLUSIVELY participate in a Great NATION-WIDE LIQUIDATION
\$1,000,000 DIAMOND SALE
Over stocked Manufacturer enlists us among 75
Jewelers across the country to Liquidate Excess
Inventory at ½ off!

Among the various items offered were articles advertised as follows:

Your Choice
\$149.95
Regularly
\$300.00

PAR. 5. Through the use of the statements appearing in the aforesaid advertisements, respondents, directly or by implication represented:

1. That the jewelry purchased from respondents and sold by jewelers purchasing said merchandise, consisted of respondents' surplus or overstocked merchandise;

2. That \$300.00 was the usual and customary retail price of the jewelers advertising said jewelry in the recent regular course of business;

3. That said jewelry was offered for sale by the advertising jewelers at one-half the price at which it was usually and customarily sold by said jewelers at retail in the recent regular course of business and that a savings of one-half was afforded to purchasers from the usual and customary retail price of said jewelers.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact:

1. The jewelry sold by respondents and purchased by jewelers did not consist of respondents' surplus or overstocked merchandise but was composed of items made up especially for said promotions.

2. Said jewelers had not sold the advertised jewelry at \$300.00 or at any other price in the recent regular course of business.

3. Said jewelry offered for sale by the advertising jewelers was not at one-half the price at which it was usually and customarily sold by them in the recent regular course of business and if any saving was afforded to purchasers, it was substantially less than one-half from the usual and customary retail price of said jewelers.

PAR. 7. Respondents for the purpose of inducing the purchase of their jewelry, also engaged in the practice of using fictitious retail prices by attaching tickets or tags on which prices are printed, thereby representing, directly or by implication, that such prices are the usual and customary retail prices of said jewelry. In truth and in fact, said price figures are not the usual and customary retail prices at which said jewelry is sold at retail but are fictitious and greatly exaggerated prices.

PAR. 8. By engaging in the acts and practices set out in Paragraphs 4 and 7 hereof, respondents supply the means and instrumentalities through and by which retailers may mislead the purchasing public as to the nature of their jewelry, the usual and customary retail prices thereof, and the savings that are afforded to purchasers thereof.

PAR. 9. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of jewelry of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' 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. 11. 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. DeWitt T. Puckett supporting the complaint.

Brozan and Holman by *Mr. Aaron Holman* of New York, N.Y. for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On July 15, 1960 the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents had made fictitious pricing and savings claims to promote the sale of the jewelry they distribute and sell.

After issuance and service of the complaint the respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate Director and the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondents J. Fiddelman & Sons, Inc., and Syndicate Diamonds, Inc. are corporations existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 130 West 46th Street, New York, New York.

2. Respondents Sidney Fiddelman and Donald H. Fiddelman are officers of the corporate respondents. Their address is the same as that of the corporate respondents.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named and the proceeding is in the public interest.

ORDER

It is ordered, That respondents J. Fiddelman & Son, Inc., and Syndicate Diamonds, Inc., corporations, and their officers, and Sidney Fiddelman and Donald H. Fiddelman, individually and as officers of said corporations, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of jewelry or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing advertising matter or any other means or instrumentality to others by and through which they may represent, directly or by implication:

(a) That the merchandise offered for sale by them is respondents' surplus or overstocked merchandise, unless such is the fact;

(b) That any amount is the usual and customary retail price of their merchandise when it is in excess of the price at which they have usually and customarily sold the merchandise in the recent and regular course of their business.

(c) That a saving is afforded to purchasers of their merchandise unless the price at which it is offered constitutes a reduction from the price at which they have usually and customarily sold the merchandise in the recent and regular course of business.

2. Preticketing merchandise sold to others for resale to the public which tickets set out prices which are in excess of the prices at which the merchandise is usually and customarily sold at retail.

3. Misrepresenting in any other manner the retail price of their merchandise or the amount of savings afforded to purchasers at retail from the usual and customary retail prices of their merchandise.

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 10th day of January, 1961, become the decision of the Commission; and accordingly:

