

of the Commission.
It is further ordered, That respondents Simpson Timber Company, a corporation, and Simpson Redwood Company, a corporation, shall, on March 1, 1962, and at the expiration of each calendar year until termination of the order contained in the initial decision as provided by the terms thereof, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

IN THE MATTER OF
ROBOT TIME, INC., ET AL.

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

Docket 8403. Complaint, May 19, 1961—Decision, Jan. 5, 1962

Order requiring New York City assemblers of so-called "Robot watches" from imported movements with cases, dials, bracelets, and other parts purchased from other manufacturers, to cease using fictitious prices in connection with the sale of their watches to wholesalers, retailers, etc., through such practices as affixing to each watch a ticket or metallic tag printed with an excessive amount, represented thus as the usual retail price.

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 Robot Time, Inc., a corporation, and Louis Silverman and Pearl Silverman, individually and as officers 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 Robot Time, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 580 5th Avenue, New York, N.Y.

Respondents Louis Silverman and Pearl Silverman are officers of the corporate respondent. They formulate, direct and control the

acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 sale and distribution of watches 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 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, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by attaching or causing to be attached tickets to their said watches upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail prices of said watches in the trade areas where the representation is made. In truth and in fact, the said amounts are fictitious and in excess of the usual and customary retail prices of said watches in the trade areas where the representation is made.

PAR. 5. By the aforesaid acts and practices respondents furnish means and instrumentalities whereby dealers may mislead the public as to the usual and regular retail prices of their watches.

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 watches of the same general kind and nature as that sold by respondents.

PAR. 7. 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. 8. The aforesaid acts and practices of respondents as herein alleged, were, and are, all to the prejudice and injury to 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.

Mr. Louis Silverman, of New York, N.Y., *pro se*.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was brought under Section 5 of the Federal Trade Commission Act by the issuance of a complaint on May 19, 1961, charging the above-named corporate respondent and the individual respondents, its officers, with unfair acts and practices in the pricing of their watches which are sold in interstate commerce. Paragraphs 4 and 5 of the complaint charge specifically that respondents preticket their watches with fictitious prices which are in excess of the usual and customary retail prices of said watches in the trade areas where the representation is made, thereby furnishing the means and instrumentalities by which the purchasing public may be misled as to the regular and usual retail prices of respondents' watches.

Hearings were held in this matter on September 6 and 7, 1961, at New York, New York, at which oral testimony and documentary evidence were received in support of and in opposition to the allegations set forth in the complaint. Proposed findings of fact, brief and order have been submitted by counsel in support of the complaint and a brief in opposition thereto by Louis Silverman on behalf of the corporate and individual respondents. Consideration has been given to the proposed findings of fact and briefs submitted by the parties, and all proposed findings of fact not hereinafter specifically found are rejected. The hearing examiner having considered the entire record herein makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent, Robot Time, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 580 Fifth Avenue, New York, N.Y.

2. The individual respondent, Louis Silverman, is an officer of the corporate respondent and in said capacity formulates, directs and con-

trols the policies, acts and practices of the corporate respondent. His address is the same as the corporate respondent.

3. The individual respondent, Pearl Silverman, is an officer in name only and does not formulate, direct or control the policies, acts and practices of the corporate respondent.

4. Respondents are now, and for some time last past have been, engaged in the assembly, sale and distribution of watches, known as "Robot watches," to jobbers, wholesalers and to various types of retail stores for resale to the public.

5. In the regular and usual course and conduct of their business respondents cause, and for some time last past have caused, their "Robot watches," 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 respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Respondents, in the course and conduct of their business, are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of the same general kind and nature of watches as sold by respondent.

7. Respondents' operation consists of buying imported movements in the open market in New York as well as importing movements directly, purchasing cases and dials from other manufacturers, assembling the various component parts, attaching a bracelet and placing the assembled watch in a box. At the time respondents assemble their watches and package them for sale, they affix to each watch a ticket or metallic tag. On the face of each metallic tag or ticket is an amount in figures purporting to represent the regular and customary retail price of the particular watch. These pre-tickets are on each "Robot watch" when it is shipped from respondents' place of business to jobbers, wholesalers and the various types of retail establishments with whom they do business, and it is still attached to the watches when they are sold to the ultimate consumer or user.

8. Meyer Gillespie, one of respondents' customers, testified that he never sells respondents' "Robot watches" to retail customers at the Robot ticketed prices. For example, one customer of Gillespie testified she purchased a Robot watch, Model #617X, from Gillespie in June of 1959 for \$15.00 which bore a Robot ticket of \$49.75. Illustrative of other retail sales made by Gillespie to ultimate purchasers of Model #617X "Robot watches" were two at \$14.00 and \$18.00, which also had been preticketed by Robot at \$49.75.

Blanche Ring, employed by another one of respondents' customers, testified that they also never sold "Robot watches" to retail customers at the Robot preticketed prices. For example, one Robot watch, preticketed by respondents at \$71.50, was sold by this witness for \$24.88, plus tax, admittedly a slight reduction from her tagged price of \$27.50.

9. On the basis of the entire record the examiner finds that respondents have engaged in the practice of using fictitious prices in connection with the sale of their watches by attaching or causing to be attached thereto metallic tags or tickets upon which certain amounts are imprinted, thereby representing directly or by implication that said amounts are the usual and customary retail prices of said watches in the trade areas where the representations are made; whereas, in fact, the said amounts are fictitious and in excess of the usual and regular retail prices of said watches in the trade areas where the representations are made.

10. By pre-ticketing their watches, as aforesaid, respondents furnish the means and instrumentalities by which others may mislead the purchasing public as to the usual and regular prices of respondents' watches.

11. The use by respondents of the aforesaid practice of pre-ticketing has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the said pre-ticketed prices are the usual and regular retail prices of respondents' watches. Respondents' false, misleading and deceptive pre-ticketing of their watches induces the public to purchase substantial quantities of respondents' watches by reason of said erroneous and mistaken belief as to their true prices. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

12. The aforesaid acts and practices of respondents in pre-ticketing their watches 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.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of and over respondents 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 respondents, by pre-ticketing their watches with fictitious prices which are not the usual and regular retail prices of said watches in the trade areas where the representations are made, put into the hands of retailers who buy the watches from them, the means whereby such persons may mislead and deceive members of the purchasing public into the erroneous belief that the "retail" price or pre-ticketed price is the usual and regular retail price in the trade area where the representations are made. Respondents' acts and practices in pre-ticketing their watches are unfair and deceptive and constitute violations of the Federal Trade Commission Act. *The Clinton Watch Company, et al v. F. T. C.*, 291 F. 2d 838 (CA 7, June 1961); *Niresk Industries, Inc. v. F.T.C.*, 278 F. 2d 337 (CA 7, March 1960), cert. denied, 364 U.S. 883; *Rudin & Roth, et al.*, 53 F.T.C. 207 (1956), and *The Orloff Co., Inc., et al*, 52 F.T.C. 709 (1956).

4. The fact that others in the watch industry may be engaged in activities which are substantially similar does not justify respondents adopting a similar method or practice. *F.T.C. v. A. E. Staley Mfg. Co., et al*, 324 U.S. 746 (1945) and *International Art Co., et al. v. F.T.C.* 109 F. 2d 393, cert. denied 310 U.S. 632.

5. A pre-ticket, showing a fictitious price, has a tendency to mislead a purchaser into believing that the reduced price which he is securing from one of respondents' various retailers is a saving from the prevailing price for the watch elsewhere in the same trade area, and it is immaterial that in other trade areas the pre-ticketed price may be charged. *The Baltimore Luggage Company, et al.*, Docket No. 7683, March 15, 1961.

6. "Retail sales" are direct sales to the ultimate consumer or user. Similarly "retail prices" are the prices paid by the ultimate purchaser or user. A "retail sale" is nonetheless a retail sale because the ultimate consumer purchases the article in a "discount house" or "cut-rate store." *White Motor Co. v. Littleton*, 124 F. 2d 92 (CA 5); *Guess v. Montague*, 51 F. Supp. 61; *Garlock Packing Co. v. Glander*, 80 N.E. 2d 718; *Stolze Lumber Co. v. Stratton*, 54 N.E. 2d 554, 386 Ill. 334; *Palmer v. Perkins*, 205 P. 2d 785; 119 Colo. 533, and *Scott v. Daggett*, 226 S.W. 2d 183.

ORDER

It is ordered, That Robot Time, Inc., a corporation, Louis Silverman, individually and as an officer of said corporation, and Pearl

Silverman, 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 watches, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by pre-ticketing 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 respondents' products; and

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as respects respondent Pearl Silverman, in her individual capacity, but not to the extent that she may be subject to this order as an officer or agent of the corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 5th day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

L. HART AND SON CO., INC., ET AL.

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

Docket C-56. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring furriers in San Jose, Calif., to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of the fur used in fur products; failing to disclose on invoices the country of origin of furs used, when the fur was artificially colored, and when fur products were composed wholly or substantially of flanks;

failing to comply in other respects with labeling and invoicing requirements; by advertising in newspapers which represented prices of fur products as reduced from previous higher prices without giving the time of such compared higher prices; and failing to maintain adequate records disclosing the facts upon which such pricing claims were based.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. Hart and Son Co., Inc., a corporation, and Alexander J. Hart, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 L. Hart and Son Co., 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 Santa Clara and Market Streets, San Jose, Calif.

Individual respondent Alexander J. Hart, Jr., is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents acting in cooperation and conjunction with Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation, and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(1) To show the true animal name of the fur used in the fur product.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

(1) To show the true animal name of the fur used in the fur product.

(2) To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

(3) To show the country of origin of the furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(1) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(2) The disclosure that fur products were composed in whole or substantial part of flanks was not set forth in violation of Rule 20 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended too aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the San Jose Mercury News, a newspaper published in the city of San Jose, State of California, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared higher prices in violation of Rule 44(b) of said Rules and Regulations.

PAR. 9. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent L. Hart and Son Co., 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 Santa Clara and Market Streets, San Jose, Calif.

Respondent Alexander J. Hart, Jr., is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That L. Hart and Son Co., Inc., a corporation, and Alexander J. Hart, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation, or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

C. Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on the one side of labels.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

B. Setting forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

C. Failing to disclose that fur products are composed in whole or in substantial part of fawns when such is the fact.

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

(a) Uses previous higher prices as comparatives without giving the time of such higher compared prices.

4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

STANDARD HANDKERCHIEF CO., INC., ET AL.