

The Commission having considered this case on the appeal of counsel supporting the complaint from the initial decision and order of the hearing examiner dismissing the complaint, and having concluded that the complaint should be dismissed because of failure of proof:

It is ordered, That the complaint be, and it hereby is, dismissed.

By the Commission, Chairman Dixon and Commissioner MacIntyre dissenting.

IN THE MATTER OF

WALTHAM PRECISION INSTRUMENT COMPANY INC.,
FORMERLY KNOWN AS WALTHAM WATCH COMPANY
ET AL.

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

Docket 6914. Amended Complaint, March 26, 1958—Decision, Oct. 16, 1962

Order requiring the successor to the well-known Waltham Watch Co. and a second corporation spun off the assets of the old firm and later merged with Hallmark, Inc., to cease—in advertising in magazines, newspapers, and circulars distributed to the trade, and on labels and packages—overstating the number of jewels in their watches and using the name “Waltham” for the watches without clearly disclosing the foreign origin of Swiss-made parts.

AMENDED AND SUPPLEMENTAL 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 Waltham Precision Instrument Company, a corporation formerly known as Waltham Watch Company, Waltham Watch Company, a corporation, and Joseph Axler, Melvin Axler, Irving H. Stolz, Seth Harrison and Frank Silver, individually and as officers and former 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Waltham Precision Instrument Company, Inc., formerly known as Waltham Watch Company, is a corporation organized, existing and doing business by virtue of the laws of the State of Massachusetts with its office and principal place of business located in Waltham, Mass. Respondent Waltham Watch Company is a corporation organized, existing and doing business by virtue of the laws of the State of Delaware with its office and principal place of business located at 475 Fifth Avenue, New York 17, N.Y.

During a part of the time referred to hereinafter, respondents Joseph Axler, Melvin Axler, Irving H. Stolz, Seth Harrison and Frank Silver were officers of respondent Waltham Precision Instrument Company, Inc., then known as Waltham Watch Company. The aforesaid respondents have formulated, directed and controlled the policies and practices of said Massachusetts corporation. The address of respondent Frank Silver is the same as that of respondent Waltham Precision Instrument Company, Inc., and he and respondent Irving H. Stolz presently serve as officers and/or directors of said corporation. Respondents Joseph Axler, Melvin Axler, Irving H. Stolz and Seth Harrison are now officers and/or directors of respondent Waltham Watch Company, a Delaware corporation. They formulate, direct and control the policies, acts and practices of said respondent corporation. Respondents Joseph Axler, Melvin Axler and Seth Harrison have their principal place of business at 475 Fifth Avenue, New York 17, N.Y., and the address of respondent Irving H. Stolz is 122 East 42nd Street, New York, N.Y.

PAR. 2. The respondents have purchased 17-jewel watch movements made in Switzerland, added a device containing 4- or 8-synthetic jewels, and cased them. The watches have then been advertised, offered for sale, and sold by respondents under the name of "Waltham Premier," principally to retailers.

PAR. 3. Respondents have caused their said products when sold to be transported from the State of Massachusetts and elsewhere to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The respondents have advertised their said watches in newspapers, jewelers' trade magazines, nationally distributed magazines, and by means of circulars distributed to the trade. Labels and packages also have contained various advertising inscriptions. Among

and typical, but not all inclusive, of the statements appearing in such advertising material have been the following:

Watches that are worthy successors to the famed, history rich Waltham creations of the past 107 years.

The 25 jewel premier group has patented oil reserve jewels, a horological development that adds 8 extra ruby jewels to the customary 17 friction bearing jewels.

Waltham premier 25.

Presenting the 25 JEWEL PREMIER by Waltham . . . America's first watch.

PAR. 5. By means of the above-quoted statements, and others of similar import but not specifically set out herein, respondents have represented, directly or by implication, that said watches contain 25 jewels, each of which serves a mechanical purpose as a frictional bearing, that is, each jewel provides a mechanical contact at a point of wear; that the so-called oil reserve jewels are genuine rubies; and that their said watches are manufactured in their entirety in the United States by the well-known and long-established Waltham Watch Company, which company's products have long been held in high esteem by the American public.

PAR. 6. The aforesaid statements were and are false, misleading and deceptive. In truth and in fact, the jewels contained in the device attached by respondents to the 17-jewel movements do not serve a mechanical purpose as frictional bearings and the watches are not 25 or 21-jewel watches but are 17-jewel watches. The jewels used in the so-called oil reserve device are synthetic. The movements in respondents' said watches are not manufactured in the United States nor are they made by the Waltham Watch Company, but are made in Switzerland by watchmakers other than Waltham Watch Company and imported.

PAR. 7. By the acts and practices aforesaid, respondents have placed in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the number of friction bearing jewels contained in the respondents' watches and into believing that the jewels in the so-called oil reserve device are genuine rubies and that the said watches are manufactured in this country by the long-established Waltham Watch Company.

There is and has been a decided preference among a substantial segment of the purchasing public for watches containing movements manufactured in the United States over those manufactured in whole or in part in foreign countries.

PAR. 8. Respondents, in the course and conduct of the sale of their watches, have been in substantial competition in commerce with other

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corporations, firms and individuals engaged in the manufacture, sale and distribution of watches.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had the capacity and tendency to induce members of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and into the purchase of a substantial number of their watches as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, have been to the prejudice and injury of the public and of respondents' competitors and 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 for the Commission.

Noble & Moyle, by *Mr. Paul Noble*, of Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondents have violated the Federal Trade Commission Act by disseminating advertising matter containing false and misleading representations concerning their Waltham watches. The case has been tried upon an amended and supplemental complaint and the several answers thereto. An appropriate order is being issued herein against all respondents except Irving H. Stolz, Seth Harrison, and Frank Silver, as to whom the complaint is being dismissed.

This proceeding was originally instituted on October 14, 1957, by a complaint against Waltham Watch Company, a Massachusetts corporation, and the five individual respondents herein. On December 2, 1957, said respondents filed their answer, setting forth in substance that there had been a material change in the corporate structure of respondent Waltham Watch Company some months prior to the issuance of said original complaint. As a result of these revelations, the Commission, on March 26, 1958, issued its amended and supplemental complaint, including as a respondent Waltham Precision Instrument Company, Inc., a Massachusetts corporation formerly known as Waltham Watch Company; a new corporation, Waltham Watch Company, a Delaware corporation; and the five said individual respond-

ents. On September 9, 1958, Waltham Precision Instrument Company, Inc., filed its answer; on September 10, 1958, Waltham Watch Company, the Delaware corporation, filed its answer; and on September 11, 1958, the individual respondents filed their joint answer to the amended and supplemental complaint. Extensive hearings were held in Washington, D.C.; Chicago, Illinois; and New York, N.Y., on various dates from June 27, 1958, to December 2, 1960. The Commission's case-in-chief was rested on September 30, 1959. Thereafter, on June 19 and 20, 1959, respondents filed their several motions to dismiss the amended and supplemental complaint, which motions were denied on August 19, 1959, by an interlocutory order in which it was found that a *prima facie* case had been established. Respondents' presentation of evidence in support of their answers was commenced on January 11, 1960, and completed on October 14, 1960, such hearings having been held in Chicago, Illinois, and New York, N.Y.

During the pendency of respondents' evidence, on June 6, 1960, American Watch Association, Inc., moved for leave to intervene, and on June 14, 1960, Elgin National Watch Company and Hamilton Watch Company filed their joint motion for leave to intervene. Respondents opposed these motions, and they were denied, respectively, on June 10 and 24, 1960, leave being granted, however, if such would-be intervenors so desired, to file briefs *amicus curiae*. No such briefs have ever been filed.

Counsel supporting the complaint presented further evidence in Chicago, Illinois, on December 1 and 2, 1960, purportedly in rebuttal, but upon motion of respondents the evidence proffered in rebuttal was rejected by the hearing examiner in an order issued December 30, 1960, on the ground that it was cumulative and merely an attempt to retry the case-in-chief. All parties having rested, this order also terminated reception of evidence and fixed March 1, 1961, as the time for filing proposed findings. On January 11, 1961, however, counsel supporting the complaint filed a motion to reopen hearings for the purpose of receiving certain rebuttal evidence of other witnesses than those whose evidence was proffered on December 1 and 2, 1960. On April 21, 1961, counsel supporting the complaint withdrew his said motion to reopen hearings, and therefore the evidence proposed therein is not a part of this record.

The order of December 30, 1960, terminating the reception of evidence had never been rescinded; but, by reason of the delay occasioned by the said motion to reopen hearings filed by counsel supporting the complaint on January 11, 1961, and withdrawn on April 21, 1961, the time designated for filing proposed findings by the parties was ex-

tended to June 26, 1961, at which time counsel supporting the complaint filed his proposed findings, conclusions and order. In lieu thereof, however, respondents, on June 21, 1961, filed a motion to consolidate this case with several others then pending before the Commission against one or more of the respondents herein, together with a motion to dismiss, or, in the alternative, to consolidate the said cases. These motions were opposed by counsel supporting the complaint on June 22, 1961, and on July 14, 1961, the motions to consolidate were denied on the ground that the hearing examiner was without authority to consolidate proceedings. Ruling on the motion to dismiss was deferred, and will be made hereinafter. Respondents, pursuant to leave granted, filed their proposed findings of fact and conclusions of law on August 14, 1961, and the record is now before the hearing examiner for decision.

While the record is fairly extensive, the issues in this case are relatively simple. They consist of three charges that, by their advertisements, respondents have falsely and deceptively represented, directly or by implication:

1. That their watches contain 25 jewels, each of which serves a mechanical purpose as a friction bearing; that is, each jewel provides a mechanical contact at a point of wear;
2. That the so-called oil reserve jewels of respondents' "Resevoil" device are genuine rubies; and
3. That respondents' watches are manufactured in their entirety in the United States by the well-known and long-established Waltham Watch Company, which company's products have long been held in high esteem by the American public.

The respondents, by their several answers, deny these charges, and respondent Waltham Precision Instrument Company, Inc., while admitting its engagement in commerce, denies that it is now engaged in commerce involving civilian watches. Waltham Watch Company, the Delaware corporation, in its answer pleads, as a special defense, that the alleged jewels in question, added to a normal 17-jewel watch movement, are patented oil supply jewels which improve said movement by adding more oil to and enhancing the fluid life of jewel bearings, into which they are assembled and of which they become an integral part. According to said respondent, these additional "jewels" are part of a patented device designated "Resevoil" under United States Patent No. 2,478,865, which was granted to one Rene Fiechter on August 9, 1949, and by the use of such patented device on a basic 17-jewel watch, the same becomes a 25-jewel watch, superior to competitive watches not using the patented Resevoil features.

In the answer of the five individual respondents, in addition to denying the material charges of the complaint, it is pleaded that respondents Joseph Axler and Melvin Axler are the officials of respondent Waltham Watch Company, the Delaware corporation, who are responsible for the practices, acts and policies of that corporation, but that the other individual respondents, Irving H. Stolz, Seth Harrison and Frank Silver, while occupying various positions in the respondent corporations at various times, were in no way concerned with or empowered to direct the policies, acts and practices of the respondent corporations. There being in the record no evidence to the contrary, this proceeding is being dismissed as to them, both individually and as officers or former officers of said respondent corporations. Accordingly, all further general reference to respondents in this initial decision will mean all respondents except the individual respondents Stolz, Harrison and Silver.

Running parallel to the case at bar are several other proceedings of importance in this case. As the following discussion of the evidence will develop, these cases have a close relationship to the instant one. While counsel supporting the complaint was presenting his case-in-chief, an ancillary investigative proceeding was pending in the United States District Court of the Southern District of New York against Waltham Watch Company, the Delaware corporation, a respondent herein. In that proceeding a subpoena was enforced against the said corporation in *F.T.C. v. Waltham Watch Co.*, 169 F. Supp. 614 [6 S. & D. 498], decided January 13, 1959. Some of the evidence produced in response to that subpoena was presented in the course of this proceeding. Similarly, in *F.T.C. v. Hallmark, Inc., et al.*, 265 F. 2d 433 [6 S. & D. 539] (C.A. 7, March 30, 1959), an investigative proceeding, further evidence was adduced which is material here, inasmuch as it was disclosed in the record herein that the owners of Hallmark, Inc., bought the name, business and assets, with minor exceptions not material hereto, of Waltham Watch Company, the Delaware corporation, a respondent herein, and then merged the two corporations, Hallmark and Waltham, under the name of Waltham Watch Company, the Delaware corporation respondent herein.

Another case whose history parallels the case at bar, and which is the controlling decision in this case, is *Allen V. Tornek Company*, 55 F.T.C. 1770, in which the Commission found that the so-called "jewels" in the same basic Resevoil device involved in the present proceeding were not jewels, as that term is understood and used in the watch industry and trade, and prohibited advertising so representing them. The complaint in that case was issued May 16, 1955; the initial

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decision was issued September 23, 1958; and the Commission's decision was issued May 13, 1959. Subsequent thereto, respondent petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Commission's order. That Court, on February 25, 1960, found no error in the Commission's proceedings, affirmed its order, and granted enforcement thereof (276 F. 2d 513 [6 S. & D. 726]; 107 App. D.C. 267). On March 23, 1960, that Court denied rehearing to respondent. On application to the Supreme Court of the United States, certiorari was denied October 10, 1960 (364 U.S. 829), and on November 21, 1960, rehearing thereof was denied (364 U.S. 906). It will be noted that the various decisions and orders material hereto in the *Tornek* case occurred during the course of the proceedings before the hearing examiner in the case at bar. The initial decision and the decision of the Commission in *Tornek* were issued during the presentation of the case-in-chief herein. During the hearing of the defense herein, the Court of Appeals issued its decision and also denied rehearing thereof in *Tornek*. The Supreme Court also denied certiorari in *Tornek* while respondents herein were presenting their defense. After the defense had rested in the instant proceeding, and before counsel supporting the complaint attempted to present his rebuttal evidence, the Supreme Court finally terminated the litigation in *Tornek* by denying rehearing. Since the *Tornek* case is of paramount importance herein, and is relied upon both by counsel supporting the complaint and by respondents, it will be more fully analyzed and discussed in the course of the findings hereinafter.

During the course of the hearings rulings were reserved on several matters. These rulings will now be made as follows:

1. Respondents' Exhibits 54, 55, 56 and 57 for identification are hereby received into the record.
2. Any and all motions to strike evidence are hereby denied.
3. In the light of the findings hereinafter made, respondents' motion to dismiss the complaint, filed June 21, 1961, on which ruling was reserved, is hereby denied.

All proposed findings of fact and conclusions of law submitted by the parties which are not incorporated herein, either verbatim or in substance and effect, are hereby rejected.

The hearing examiner has carefully and fully analyzed the whole record, taking into consideration his observation of the appearance, conduct and demeanor of the witnesses who appeared before him. All procedural matters have been thoroughly reviewed. All proposals and briefs of counsel have been studied in the light of the entire

record. Respondents' counsel have requested oral argument, but this is deemed unnecessary, and is hereby denied.

Upon the whole record, the hearing examiner finds generally that the Commission has fully sustained the burden of proof incumbent upon it, and has established by reliable, probative and substantial evidence and the fair and reasonable inferences drawn therefrom all the material allegations of the complaint; and further finds that the evidence submitted or relied upon by respondents fails to establish facts constituting any valid defense to the violations charged in the complaint. More specifically, upon due consideration of the whole record, the hearing examiner makes the following:

FINDINGS OF FACT

Respondent Waltham Precision Instrument Company, Inc., formerly known as Waltham Watch Company, is a corporation organized, existing and doing business by virtue of the laws of the State of Massachusetts, with its office and principal place of business located in Waltham, Massachusetts. Respondent Waltham Watch Company is a corporation organized, existing and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business formerly located at 475 Fifth Avenue, New York 17, New York, but since June 30, 1960, located at 231 South Jefferson Street, Chicago, Illinois.

From October, 1956, until July, 1957, respondents Joseph Axler and Melvin Axler were officers of respondent Waltham Precision Instrument Company, Inc., then known as Waltham Watch Company, a Massachusetts corporation. The aforesaid individual respondents, during that time, formulated, directed and controlled the policies and practices of said corporation. Respondents Joseph Axler and Melvin Axler became officers and directors of the respondent Waltham Watch Company, a Delaware corporation, from the time of its incorporation on June 30, 1957, until on or about July 1, 1960. During this time they formulated, directed and controlled the policies, acts and practices of said respondent corporation. On June 30, 1960, the business and assets, with minor exceptions not pertinent hereto, of the Waltham Watch Company, including its rights to the said Patent No. 2,478,865 on the basic Reservoir device, were acquired by interests controlling Hallmark, Inc., an Illinois corporation, which, on that date, was merged into respondent Waltham Watch Company, the latter's Delaware charter being retained. The two respondents Axler at that time resigned their offices and sold their interests in Waltham, the Delaware corporation, and since then have held no stock in said respondent

corporation, nor had any official connection therewith. After the merger, the offices of Waltham Watch Company were transferred from New York to the Chicago address, above stated.

The Waltham Watch Company was a Massachusetts corporation that had had a long and successful history in the watch industry, and its products were well known throughout the United States. The history of this company is in the record as Respondents' Exhibit 57, a publication entitled "Timing A Century", which is one of the Harvard studies in business history, published by the Harvard University Press. In 1956 the respondents Axler and others associated with them in business, acquired control of said company. About that time it had ceased to manufacture watches at Waltham, Massachusetts, and had opened an office in New York City and had begun to purchase watch movements from Switzerland and watch cases in both Switzerland and the United States, and to assemble such watches. The watch business had become unprofitable in the Waltham, Massachusetts, operations, and the directors took appropriate action to divide the business of the company; and on June 30, 1957, the stockholders authorized the corporation to spin off its assets in such a manner as to set up a new corporation to be known as the Waltham Watch Company, the Delaware corporation respondent herein. It took over the watch business of the former Massachusetts corporation of the same name. The Massachusetts corporation, Waltham Watch Company, changed its corporate name to Waltham Precision Instrument Company, Inc., also a respondent herein. This company was to continue the business at Waltham, Massachusetts, but to engage in the manufacture of various precision instruments other than watches. Inquiry as to the details of this spin-off were objected to by respondents' counsel, and not pursued by counsel supporting the complaint; and the record, therefore, is not clear as to whether the respondent Waltham Precision Instrument Company, Inc., by covenant or otherwise, had agreed never to manufacture, assemble or sell watches in the future under the old, well-established Waltham name. It was during the period of the existence of this Massachusetts corporation as Waltham Watch Company, however, that most of the advertising in the record was disseminated through the media of various trade magazines and newspapers. Therefore the order issued herein must include Waltham Precision Instrument Company, Inc.

During the progress of the Tornek case the respondent therein, Allen V. Tornek, sold and transferred to Waltham Watch Company, the Massachusetts corporation, all of his interest in the said Patent No. 2,478,865, in which the inventor, Rene Fiechter, still held a half in-

terest. The original patent had been granted on August 9, 1949. On April 16, 1954, Fiechter applied for another patent on a lubricated jewel bearing for watch movements and other precision instruments. That patent was granted on January 12, 1960. While it is an independent patent, it is the substantial contention of respondents that this patent covers a device which is an improvement over the said prior invention. This patent also was issued to Fiechter, with Tornek as assignee of a half interest therein. Prior to the dissemination of the advertisements in question herein, the Massachusetts corporation, Waltham Watch Company, had acquired Tornek's interest in this second patent as well as in the prior patent. The advertisements received in evidence in this proceeding, and which are the basis thereof, contain statements pertaining to the latter patent, which purports to add eight jewels to a standard 17-jewel watch movement, rather than four jewels, as in the original device, and as litigated in the *Tornek* case.

The advertisements involved herein were published by the Massachusetts "Waltham Watch Company, Executive and Sales Offices, 475 Fifth Avenue, New York 17, N. Y.; Joseph Axler, President; Melvin Axler, Executive Vice President", in various trade journals circulating among the jewelry and watch trade, and in metropolitan newspapers of wide and general circulation throughout the United States. Only one publication was made of the advertisement in such newspapers, but it was published simultaneously on Sunday, April 21, 1957, in the magazine sections of the New York Times, Philadelphia Inquirer, Chicago Tribune, Detroit Free Press and St. Louis Post-Dispatch. Official notice is taken of the fact that the circulation of these five newspapers, combined, was at that time about four and three-quarters of a million copies every Sunday, and they were circulated throughout a very substantial part of the United States. While the respondents, on the record, generally admitted that they were engaged in interstate commerce, there was no specific admission that their challenged advertising circulated in commerce. The exhibits were received in evidence, however, without objection, and unquestionably establish that the respondents did engage in substantial interstate advertising of the "Waltham Premier 25" jewel watch, which contained the "Resevoil" device with the eight alleged extra "oil reserve jewels", under the then pending application for patent therefor.

The advertisements so disseminated by respondent Waltham Watch Company, the Massachusetts corporation, contained statements pertaining to Waltham being America's first watch, and also referred to

their watches as "25-jewel Walthams". Among other statements, material herein, appearing in such advertising were the following:

Watches that are worthy successors to the famed history-rich Waltham creations of the past 107 years.

The 25-jewel Premier by Waltham * * * America's First Watch.

Waltham Premier 25.

The 25-jewel Premier group has patented oil reserve jewels, a horological development that adds 8 ruby jewels to the customary 17 friction-bearing jewels.

In addition to these publications, respondents also placed in the cases in which their watches were distributed and sold throughout the country their guarantee, which included the following statements:

Waltham, the first American watch company;

Waltham is the first American standardized watch;

Introducing * * * your new Waltham watch * * * precision made to the traditionally high quality specifications of America's first watch maker. It is made by expert watch makers using scientific methods and precision machinery and embodies the skills developed during Waltham's 102-year existence. Nowhere in the world are there better equipped or more thoroughly experienced craftsmen.

At their disposal are machines, equipment and testing devices of such rare sensitivity that parts are produced within 1-10,000th of an inch".

The record is clear that respondents have caused their watches to be advertised, sold and transported from the State of New York and elsewhere to purchasers located in various other states of the United States and in the District of Columbia.

The record is replete with the evidence of experts who agree upon the parts and functions of a traditional 17-jewel watch. This evidence is in accord with the description of the construction and operation of such a watch, as so well stated by the Commission in the *Tornek* case, 55 F.T.C. at pages 1772-1775. For brevity, that description will not be repeated here. In the course of that decision, however, and within the issues of that case, there was a definite finding that "as used in the watch industry and trade, a jewel must serve a mechanical function as a frictional bearing before it is entitled to be represented as a 'jewel' * * *" (Id. p. 1776). This opinion discusses and explains the functions of the patented device *Resevoil* as covered by the said patent of Fiechter issued in 1949. In the *Tornek* case, this device had four alleged jewels, and the Commission succinctly described their functions as follows:

Respondent's device, which has been patented by the U.S. Patent Office, consists of a small metal plate containing four stones of identical construction and material as the cap jewels found in regular 17-jewel and 21-jewel watches. Respondent's device has been so designed that it fits exactly over the train bridge of the 17-jewel watch, and is attached thereto by using the same screwholes which hold the train bridge in place. The four stones in the device are so positioned as to

be mounted directly under the hole jewels in the train bridge, in the same manner as the cap jewels in a regular 21-jewel watch. However, the stones in the Resevoil device do not touch anything because there is a minute space or gap between the concave side of the hole jewel and the bottom of the stone. On the other hand, as previously described, in a regular 21-jewel watch or the balance staff of a 17-jewel watch, the cap jewel takes the end thrust of the pinion and hence is in contact with the point of the pivot when this occurs (55 F.T.C. 1774).

Accordingly, the Commission found "that the jewel-like stones in the Resevoil device do not serve such a [mechanical] function [as a frictional bearing]" (Id. p. 1776).

In the case at bar, during the case-in-chief, two witnesses testified in substance to the definition of a jewel as stated by the Commission in *Tornek*, and that the alleged jewels in the Resevoil device were set too high to come into any mechanical contact with the moving pivot they were presumed to oil. It was undisputed by respondents' many expert witnesses that none of the eight jewel-like stones contained in the new Resevoil device, under the second patent above referred to, came into any physical contact with any pivot or other moving part of a watch. The only difference between the device covered by the new patent and that under the former one is that the new device is so arranged that under each of the four cap "jewels" therein, there is an additional "jewel", called an "idler" or "floating jewel", and between these two "jewels" is a cavity containing oil. It is the theory of the defense that this oil is distributed down to the shaft or balance staff by the action of the "floating jewel", thereby improving the lubrication of the bearing beneath it. It is repeatedly conceded on the record by counsel for respondents, and the testimony of all of the respondents' experts is to the same effect, that neither of these two "jewels", or any of the eight "jewels" contained in the Resevoil device, come into any contact with any moving part of the watch. While great effort was made to press the lubricating advantages of the Resevoil device in this proceeding, it would serve no useful purpose to outline in detail any of the extensive testimony relating thereto. This is because the basic principle has already been decided adversely to respondents' contentions in *Tornek*: that a stone which does not have a mechanical function as a frictional bearing may not be properly described as a jewel. Not only was this point decided adversely to respondents' contentions in the *Tornek* case, but the definition of a jewel, as adopted in that case, had long been accepted by the trade, as thoroughly discussed in the Commission's decision. Also the term "watch jewel" had been similarly defined by the Commission for many years prior to the *Tornek* decision. As so ably stated in the Commission's brief, filed with the Court of Appeals in the *Tornek* case, at page 25,

Since 1926 at least ten stipulations and consent orders have been entered by the Federal Trade Commission in which respondents have agreed to cease and desist from representing that watches sold by them contain a stated number of jewels, unless each and every one of the jewels serves "a mechanical purpose as frictional bearing." 10 F.T.C. 583, 585 (1926); 10 F.T.C. 590, 593 (1926); 10 F.T.C. 593, 596 (1926); 10 F.T.C. 603, 606 (1926); 11 F.T.C. 494, 497 (1926). To the same effect, see *Bulova Watch Co.*, 16 F.T.C. 529, 532 (1932); *Roseman Enterprises Company*, 52 F.T.C. 467, 471 (1955); *Windsor Pen Corporation*, 52 F.T.C. 655, 658 (1956); *Cimier Watch Corp.*, 54 F.T.C. 542 (1957); *World Wide Watch Co.*, 55 F.T.C. 1072 (1959).

Hence, over a period of thirty-three years the Commission has consistently construed the term watch jewel as referring only to those jewels which serve the mechanical function of bearing friction. And as stressed by the Supreme Court in *Federal Trade Commission v. Mandel Brothers, Inc.*, 359 U.S. 385, 391 (1959): "This contemporary construction is entitled to great weight * * * even though it was applied in cases settled by consent rather than in litigation."

With this long history of the acceptance of the Commission's definition of the term "jewel", respondents still attempt in this proceeding to give a secondary meaning to the word "jewel" so firmly established in the trade by tradition, and now by judicial decision. Any secondary meaning must be shown to be "as firmly anchored as the first one" (*F.T.C. v. Algoma Lumber Co.*, 291 U.S. 67, 80) [2 S. & D. 247], and "a high degree of proof was essential in establishing the defense of secondary meaning before the Commission" (*C. Howard Hunt Pen Company v. F.T.C.*, 197 F. 2d 273, 280 [5 S. & D. 405, 414]). See also *Vulcanized Rubber and Plastics Co.*, 53 F.T.C. 920, 934-935. Respondents' evidence does not establish any change in the traditional, accepted and approved definition of the term "jewel".

As already stated, counsel are not agreed upon the interpretation of the Court of Appeals' decision in *Tornek*. This was a short *per curiam* decision in which the Court summarized the long record before the Commission, and the Commission's decision and opinion. The Court briefly stated that there are "no jewels that do not have either a function of bearing or a function of protection against wear from friction, and that it is only stones that perform these functions that are properly called 'jewels' in the watch industry". Counsel for respondents argues that the use of the word "or" followed by the words "a function of protection against wear from friction" brings the stones in the Resevoil device within the Court's definition of "jewels", because the evidence shows that the Resevoil device aids the lubrication of the bearings. This is clearly not what the Court intended by its language, since it affirmed the Commission's order and granted enforcement thereof without any limitation or qualification. In the course of the proceedings in the case at bar, as well as in the *Tornek* case,

there was some contention that, strictly speaking, the two pallet jewels and the roller jewel of a regular 17-jewel watch were not jewels as were the other fourteen bearing jewels, because they were not oiled and did not constantly come into contact with any moving part. The Commission held, however,

Each of these three jewels contact moving parts, although intermittently, at points of wear (55 F.T.C. 1774).

Since it is necessary that these three stones be composed of the same hard substance as the fourteen bearing jewels, because they strike against other parts of the watch, they perform a function of protection against wear from friction, although they are not, strictly speaking, bearings. That is undoubtedly what the Court of Appeals meant to express by its alternative reference. These three stones may therefore be properly called jewels, and have been so accepted in the trade as well as in the decisions of the Commission.

Respondents' counsel urges that the Commission, in adhering to the traditional definition of "jewel" as set forth in the *Tornek* decision, is limiting the scope of respondents' patent and obstructing the progress of discovery and promotion of new inventions. Such a contention has been judicially denied (*Decker v. F.T.C.*, C.A. D.C. 1949, 176 F.2d 461, *cert. den.* 1949, 70 S. Ct. 159 [5 S. & D. 137]). As we said in *Vulcanized Rubber and Plastics Co.*, *supra*, at page 941, the adoption of a conservative, well-established definition rather than a new definition proposed by respondent "does not mean that the Commission stands in the way of progress. It is its duty to stand in the way of fraud and deception of the public".

Counsel supporting the complaint urges that an order be issued specifically prohibiting the use of the words "ruby jewels" by respondents. Respondents' counsel argues that "ruby" is used as an adjective, and is merely descriptive of the color of the jewel. Further discussion of this point is unnecessary, since the advertisements in question containing this expression were addressed to the watch-making industry rather than to the general public, and used these words as a part of the expression "Adds 8 extra ruby jewels to the customary 17 friction-bearing jewels * * * to assure better service", and also refers to them as "oil-reserve jewels". This would not be likely to confuse the technical experts engaged in the business of manufacturing, repairing and selling watches. The order issued herein, since it prohibits the use of the words "jewel" or "jewels" in any advertisement of the Resevoil device, encompasses the word "ruby" as designating a precious gem stone, and specific reference thereto in the order would be entirely superfluous.

In paragraph 7 of the amended and supplemental complaint it was alleged that there was a decided preference among a substantial segment of the purchasing public for watches containing movements manufactured in the United States, over those manufactured in whole or in part in foreign countries. Respondents properly contend that there is no evidence of such preference in the record. In the particular circumstances of this case, with the precise precedents cited, such allegation and proof thereof are wholly unnecessary. This is not a case where an importer brings foreign-made goods into the country and fails to reveal their foreign origin to the public. In this case the old and famous American name "Waltham" is used repeatedly in various ways to mislead the public into believing that the old Waltham firm is still manufacturing all parts of its watches in the United States.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce, and did engage in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the said Act.

3. As a result of the above-found acts and practices of respondents, substantial injury has been done to competition in commerce.

4. This proceeding is in the public interest, and an order to cease and desist should issue against respondents.

Accordingly,

It is ordered, That respondents Waltham Precision Instrument Company, Inc., a corporation formerly known as Waltham Watch Company; Waltham Watch Company, a Delaware corporation; and Joseph Axler and Melvin Axler, individually and as former officers of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, by implication or otherwise:

1. That the Reservoir device in their watches, or any other device of the same or similar construction or operation, contains

or adds to a watch any designated number of jewels, unless said device actually contains the stated number of jewels, each and every one of which serves a mechanical purpose as a frictional bearing in the watch in which it is installed;

2. That their watches are manufactured in their entirety in the United States.

It is further ordered, That the complaint herein be, and it hereby is, dismissed insofar as it relates to individual respondents Irving H. Stolz, Seth Harrison and Frank Silver.

OPINION OF THE COMMISSION

By Elman, *Commissioner*:

This case is before the Commission on cross-appeals from the initial decision of the hearing examiner.¹

In 1956 respondents Joseph and Melvin Axler, and others associated with them, acquired control of the Waltham Watch Company, a Massachusetts corporation. Joseph and Melvin Axler became, respectively, president and executive vice president, and members of the board of directors, of the corporation. In the same year the Waltham Watch Company licensed Hallmark, Inc., to use the trademark "Waltham" on watches sold by it in the United States.

About July 1, 1957, the Waltham Watch Company, by means of a "spin off", transferred its watch business to a new Delaware corporation which adopted the same name. The Massachusetts corporation was renamed the Waltham Precision Instrument Company, Inc. Joseph and Melvin Axler became president and vice president, and members of the board of directors, of the Delaware corporation.

In 1959 the Waltham Watch Company of Delaware was merged with Hallmark, Inc., under the name Waltham Watch Company. At this time the Axlers terminated their association with the company.

Most of the advertising and labeling in the record in this proceeding was disseminated during the existence of the Massachusetts corporation as the Waltham Watch Company, and while this company was controlled by the Axlers who served as its chief executive officers. The Commission concurs, therefore, in the examiner's finding that the Axlers and the Massachusetts corporation, now known as the Waltham Precision Instrument Company, Inc., are proper parties respondent herein and were properly made subject to the order to cease and desist. The Waltham Watch Company of Delaware is also properly subject to

¹ The examiner also dismissed the complaint as to three of the individual respondents, Irving H. Stolz, Seth Harrison and Frank Silver. No appeal was taken from that action.

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this order, not only because it succeeded to the watch business of the Massachusetts corporation but because, as the record shows, the deceptive advertisement of Waltham watches was continued by Hallmark, Inc., which is now merged with Waltham Watch Company of Delaware.

I

The record shows that respondents' "Waltham" watches contain 17-jewel movements imported from Switzerland to which have been added a so-called "Resevoil" device containing eight additional synthetic stones. These watches were advertised and labeled as 25-jewel watches. The following examples are noted by the examiner:

Waltham Premier 25

The 25-jewel Premier by Waltham

The 25-jewel Premier group has patented oil reserve jewels, a horological development that adds 8 extra ruby jewels to the customary 17 friction-bearing jewels

The complaint alleges, and we find, that by these statements "respondents have represented, directly or by implication, that said watches contain 25 jewels, each of which serves as a mechanical purpose as a frictional bearing, that is, each jewel provides a mechanical contact at a point of wear."

It is uncontested that only the 17 jewels contained in the imported movements of respondents' watches come in contact with any other moving parts at points of wear. Respondents claim, however, that the 8 stones in the Resevoil device perform a useful function in reducing friction in that they retain oil and distribute it to the bearings over which they are located; and, therefore, that the description of these stones as jewels and their inclusion in the total number of jewels contained in Waltham watches is not deceptive.

An identical contention was rejected by the Commission in *Allen v. Tornek Company*, 55 F.T.C. 1770 (1959). That case, like this one, involved the advertisement of stones contained in the patented "Resevoil" device as jewels. Although the "Resevoil" device in *Tornek* was covered by an earlier patent and contained only four synthetic stones, they were located in the same places over the wheel bearings of the watch and were claimed to have the same lubricating function as the eight stones in the "improved" device. The Commission considered the function of "jewels" used in watch movements and the understanding of the meaning of this term in the trade. It found that "Jewels are used [as bearings] instead of some other material because of their extreme hardness, their ability to take a high polish, and their relative imperviousness to wear and changes in temperature." In addition to

bearing jewels, watches also frequently contain so-called "roller" and "pallet" jewels which come in contact with moving parts, although intermittently, at points of wear. These jewels are also used because of their hardness and resistance to wear. The Commission concluded that the meaning of the term "jewel" in the watch industry is determined by the function which these synthetic stones perform. It stated that "The experts who testified on the subject, although they may have used different terminology, all appeared to agree that every jewel in the traditional 17-jewel and 21-jewel watch is a friction bearing jewel in the sense that they contact a moving part at a point of wear. They likewise agreed in essence that the Resevoil stones are not friction bearing jewels because the properly installed Resevoil stone does not touch a moving part."

In sum, the Commission found that "the industry looks upon a jewel as a small, hard, highly processed gem placed in a watch movement to contact a moving part at a point of wear." The Commission concluded, therefore, that to describe Resevoil stones as jewels was deceptive. As the opinion of the Commission pointed out, "to qualify for the term 'jewel', as understood by the industry, it is not enough that it serve some useful function. It must perform the function with which the word 'jewel' has long been associated." The order of the Commission was affirmed in a *per curiam* opinion. 276 F.2d 513 (C.A. D.C. 1960), *cert. denied*, 364 U.S. 829 [6 S. & D. 726].²

On the basis of the Commission's decision in *Tornek*, the long history of similar Commission orders, and the additional testimony taken in this proceeding, the examiner held that respondents' representation of the stones in the Resevoil device as "jewels" was deceptive and in violation of the Federal Trade Commission Act.

Respondents appeal from this finding of the examiner on four principal grounds: first, that complaint counsel failed to establish the meaning of the term "jewel" in the watch trade; second, that the opinion of the Court of Appeals in the *Tornek* case modified the Commission's definition; third, that regardless of the meaning of the term "jewel", respondents' advertisements were not the same as those

² Although the *Tornek* case is the most directly in point, it was not the first time that the Commission had considered the meaning of the term "jewel" in the advertisement of watches. The same definition of "jewel" was adopted in *N. Shure Company*, 12 F.T.C. 105 (1928), and has appeared in at least ten stipulations and consent orders in which parties agreed to cease and desist from representing that watches sold by them contained a stated number of jewels, unless each and every jewel serves "a mechanical purpose as a frictional bearing." 10 F.T.C. 583, 585 (1926); 10 F.T.C. 590, 593 (1926); 10 F.T.C. 593, 596 (1926); 10 F.T.C. 603, 606 (1926); 11 F.T.C. 494, 497 (1926); *Bulova Watch Co.*, 16 F.T.C. 529, 532 (1932); *Roseman Enterprises Company*, 52 F.T.C. 467, 471 (1955); *Windsor Pen Corporation*, 52 F.T.C. 655, 658 (1956); *Cimier Watch Corp.*, 54 F.T.C. 542, 544 (1957); *World Wide Watch Co.*, 55 F.T.C. 1072, 1074 (1959).

challenged in *Tornek* and were not deceptive; and fourth, that respondents must be permitted to call the stones in the Resevoil device "jewels" since this is the way they are described in the Resevoil patent and in fact the only way in which they can be described.³

We find no merit in any of these contentions. The examiner properly relied upon *Tornek* and the other prior Commission cases in determining the meaning of the term "jewel" as used in the watch trade. "The facts in that regard obviously do not vary, depending on whether Seller X rather than Y happens to be the respondent." *Manco Watch Strap Co., Inc., et al.*, Docket 7785 [60 F.T.C. 495, 511] March 13, 1962. The testimony and other evidence in the present proceeding serve only to corroborate the meaning of the term "jewel" which the Commission found in *Tornek*; and, in any event, are sufficient in themselves to support the examiner's finding.

Nor can we agree that the definition of the term "jewel" was in any way modified by the opinion of the Court of Appeals in the *Tornek* case. The court stated:

Examination of the testimony before the Federal Trade Commission shows clearly that in the 21-jewel watch commonly sold by others in the trade there are no jewels that do not have either a function of bearing or a function of protection against wear from friction, and that it is only stones that perform these functions that are properly called "jewels" in the watch industry. . . .

As to the Resevoil device in question, convincing evidence indicated that the four stones of the Resevoil did not serve a mechanical function of bearing or a protection against frictional wear. Petitioner's statement that the Resevoil watches were 21-jewel watches is therefore misleading.

Respondents claim that since the Resevoil stones have "a function of protection against wear from friction", the court's opinion permits them to be described as jewels. But the court was obviously referring to protection from wear by reason of the qualities which the Commission found to be the characteristics of jewels, i.e., their hardness and imperviousness to wear. Had it disagreed with the Commission's definition, the Court of Appeals would not have granted enforcement of the Commission's order, which required that each "jewel" serve "a mechanical purpose as a frictional bearing".⁴

Although respondents' advertisements were slightly different from those in *Tornek*, their representation of the stones in the Resevoil

³ In its "Exceptions to Examiner's Findings", respondents deny that either Waltham or "interests controlling Hallmark" ever obtained any interest in the Resevoil patents. But the issue in this proceeding is the description by respondents of the stones contained in the Resevoil devices incorporated in their watches. The ownership of the Resevoil patents is obviously irrelevant to this issue.

⁴ A petition for rehearing which contended there was an inconsistency between the Commission's and the court's definition of "jewel" was denied (March 23, 1960).

device as "jewels" was no less deceptive. Respondents' intimation (Brief, p. 7) that an asterisk, followed by a clear and conspicuous explanation of the type of jewels concerned, appeared after the word "jewel" in all of its advertisements is not substantiated by the record. To the casual reader the phrase that would stand out in many of these advertisements is "25 jewel". Even if the reader went further he would find no statement that any of these jewels were not the usual friction-bearing jewels but only that some of them were "oil-reserve jewels", a phrase which, this record makes clear, has no meaning in the watch trade. As the Commission recently had occasion to point out, *Giant Food, Inc.*, Docket 7773 [p. 326 herein] (July 31, 1962), such "explanations" or "disclaimers" are not likely to save the casual reader from being misled. The record in this case plainly shows that respondents' "explanation" of the term "25 jewel" failed to avoid the deception inherent in their advertisements.

Finally, description of the Resevoil stones as jewels cannot be justified on the ground that they are so described in the Resevoil patent. The patent was not a license to advertise watches containing the device in any particular manner. *Cf.*, *Decker v. Federal Trade Commission*, 176 F.2d 461 [5 S. & D. 137] (C.A. D.C. 1949), *cert. denied*, 338 U.S. 878. If respondents wish to describe the Resevoil device in advertisements for their watches, they must do so truthfully. The stones in this device may be described as what they are—tiny bits of synthetic material. They may not be described by a term, whether it appears in the patent or not, which accurately reflects neither their composition nor their function.

II

Complaint counsel appeals from the examiner's limitation of the order to "jewels" in the Resevoil or similar devices. The examiner gave no reason for this limitation. We agree that it is unnecessarily restrictive. The violation alleged and proved in this record is the representation as "jewels" of stones which do not perform a mechanical purpose to reduce friction and wear. The record shows that the practice of "up-jeweling" has been accomplished in many ways, of which the Resevoil device is only one. In the *Tornek* case and in the other proceedings cited above which have involved the use of the term "jewel" in the sale of watches, the Commission's orders have prohibited any misrepresentation of the number of jewels in the respondents' watches. We believe that, in view of the nature of the misrepre-

sentations shown by the record, such an order is necessary here to protect the public.⁵

III

On the second principal charge in the complaint, the examiner found that respondents had used "the old and famous American name 'Waltham' . . . repeatedly in various ways to mislead the public into believing that the old Waltham firm is still manufacturing all parts of its watches in the United States." This finding is compelled by the record. The following excerpts from respondents' advertising and labeling show how they have made use of this name:

The 25-jewel Premier by Waltham * * * America's First Watch.

Waltham, the first American watch company.

Waltham is the first American standardized watch.

Introducing * * * your new Waltham watch * * * precision made to the traditionally high quality specifications of America's first watch maker. It is made by expert watch makers using scientific methods and precision machinery and embodies the skills developed during Waltham's 102-year existence. Nowhere in the world are there better equipped or more thoroughly experienced craftsmen.

The record shows, and in fact respondents urge, that the name Waltham has, over a period of 100 years and more, come to be associated by the public with watches manufactured by the famous old American company bearing the name. As the advertisements quoted above show, the Axler management and Hallmark exploited this common understanding of the name Waltham by repeatedly referring to it as "America's First Watch," made by "the first American watch company," etc. The fact is, however, that the movements of the watches sold by respondents under the name "Waltham" are not made in the United States at all, but are imported from abroad. The sale of such watches under a name long associated by the public with entirely American-made products—an association accentuated by respondents' own advertising—is obviously deceptive. The Commission has always prohibited the use of names which carry false implications of a product's country of origin.⁶ The fact that such a name is a trademark is irrelevant. *Cf., Edward P. Paul & Company, Inc. v. Federal Trade Commission*, 169 F. 2d 294 [4 S.&D. 734] (C.A.D.C., 1948).

⁵ In the interest of clarity, we are modifying the language of the order to make it clear that the term "jewel" is not limited to stones used as bearings, but may also properly be used to describe those which, like the pallet and roller jewels, are employed because of their resistance to wear in making contact with other moving parts.

⁶ See, e.g., *Standard Sewing Equipment Corp.*, 51 F.T.C. 1012, 1029-31 (1955); *El Moro Cigar Co. v. Federal Trade Commission*, 107 F. 2d 429 [3 S.&D. 166] (C.A. 4, 1939); *Alvin M. Hayim*, Docket 7749 [56 F.T.C. 1392] (May 12, 1960); *Couristan, Inc.*, Docket 7853 [57 F.T.C. 794] (September 29, 1960).

The examiner's order, on this phase of the case, simply prohibits respondents from representing "that their watches are manufactured in their entirety in the United States." This prohibition will not suffice to assure discontinuance of the deception found. As we have pointed out, the name Waltham, in part through respondents' own efforts, has come to be associated by the public with entirely American-made watches. Deception of the public can be avoided only by requiring respondents, wherever they use the name "Waltham" in the advertisement or labeling of their watches, to disclose, clearly and prominently, the foreign origin of any of the components thereof. Respondents should be prohibited from using the term "American", or any reference to "Waltham", in any manner or context suggesting that the watches which they sell under the Waltham name are made in the United States. To provide effective relief these provisions are necessary at least until such time as the harmful effects of respondents' deceptive advertising have been erased. If and when this has been accomplished, the Commission will entertain any application for such modification as may then be appropriate. *Cf., Federal Trade Commission v. National Lead Co.*, 352 U.S. 419 [6 S.&D. 193].

IV

The examiner found that no deception was likely to result from respondents' use of the term "ruby" in describing the synthetic stones in their Resevoil device, since all of the advertisements containing this expression were addressed to the trade rather than to the general public. Complaint counsel does not challenge the findings that these advertisements were addressed only to the trade, and that those in the trade would not be likely to be deceived by such use of the term "ruby". We can find no reason to reverse the examiner's conclusion on this issue.

The appeal of respondents is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The findings and conclusions contained in the initial decision, as modified and supplemented by this opinion, are adopted as the findings and conclusions of the Commission. The order contained in the initial decision is set aside, and an order in conformity with this opinion will be issued.

FINAL ORDER

Respondents having filed, under Section 4.22(c) of the Commission's Rules of Practice, exceptions to the proposed order in this pro-

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ceeding, reasons in support thereof and a proposed alternative form of order, and counsel supporting the complaint having filed a reply opposing said exceptions; and

The Commission having determined that respondents have not given sufficient grounds for modification of the proposed order, and that said order should be entered and adopted as the Final Order of the Commission:

It is ordered, That respondents' exceptions to the proposed order be, and they hereby are, denied.

It is further ordered, That respondents, Waltham Precision Instrument Company, Inc., a Massachusetts corporation, formerly known as Waltham Watch Company; Waltham Watch Company, a Delaware corporation; and Joseph Axler and Melvin Axler, individually and as former officers of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or indirectly, including any use of a number in the name or names of their watches, that watches manufactured or sold by them contain a designated number of jewels, unless said watches actually contain the stated number of jewels, each and every one of which serves a purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

2. Using the name "Waltham" in advertising or in labeling to designate or describe watches manufactured or sold by them, without expressly, clearly, conspicuously, and prominently stating in immediate connection therewith the country of origin of each component of said watches which is not entirely manufactured in the United States.

3. Using, in advertising or labeling watches manufactured or sold by them, the terms "America's first watch", the first American watch company", "American", or any similar word or expression, to describe respondents or such watches.

4. Furnishing any means or instrumentality to others whereby the public may be misled as to any of the matters or things prohibited by the above provisions of this order.

It is further ordered, That the allegation of the complaint that respondents' use of the term "ruby" in describing the stones in their Resevoil device violated Section 5 of the Federal Trade Commission Act be, and it hereby is, dismissed.

GIMBEL BROS., INC.

1051

1027

Complaint

It is further ordered, That the complaint, insofar as it relates to individual respondents Irving H. Stolz, Seth Harrison and Frank Silver, be, and it hereby is, dismissed.

It is further ordered, That respondents shall, within sixty (60) days