

date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives.

By the Commission, Commissioner Anderson concurring in the result.

IN THE MATTER OF
BERCO, INC., ET AL.

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

Docket C-621. Complaint, Nov. 29, 1963—Decision, Nov. 29, 1963

Consent order requiring New York City distributors of watches to **retailers** to cease selling watches with bezels of base metal processed to simulate precious metal or stainless steel, without disclosing the true metal composition; selling watches without disclosing that the cases were imported from Hong Kong; and falsely marking and advertising certain watch-cases as "water resistant" and "water protected".

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 Berco, Inc., a corporation, and Ernest Grunwald and Ilse Grunwald, 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 Berco, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 East 39th Street, New York City, State of New York.

Respondents Ernest Grunwald and Ilse Grunwald 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 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. Certain of the watches offered for sale and sold by respondents are in cases which consist of two parts, that is, a back and a bezel. The back part has the appearance of stainless steel and is marked "Stainless Steel Back." The bezel is composed of base metal other than stainless steel which has been treated or processed to simulate or have the appearance of precious metal or stainless steel. Some of the bezels are finished in a color which simulates silver or silver alloy or stainless steel. Some of the bezels are finished in a color simulating gold or gold alloy. Said watch cases are not marked to disclose that the bezels are composed of base metal or metal other than stainless steel.

The practice of respondents in offering for sale and selling watches, the cases of which incorporate bezels composed of base metal which has been treated or processed to simulate or have the appearance of precious metal or stainless steel as aforesaid, without disclosing the true metal composition of said bezels is misleading and deceptive and has a tendency and capacity to lead members of the purchasing public to believe that said bezels are composed of precious metal or stainless steel.

Respondents market some of their watches in watch cases with bezels which have the appearance of being "rolled gold plate", "gold

filled" or "solid gold", and respondents do not disclose that these bezels are composed of a stock of base metal to which has been electrolytically applied a flashing or coating of precious metal of a very thin and unsubstantial character. This practice is deceptive and confusing to the consuming public unless the thin and unsubstantial character of the flashing or coating is disclosed by an appropriate marking.

PAR. 5. Certain of the watches offered for sale and sold by respondents are in cases imported from Hong Kong. When delivered to respondents' customers for resale, said watches have the word "Swiss" on the dials. There is no disclosure of the fact that the watch cases are imported from Hong Kong.

The practice of respondents in offering for sale and selling watches, the cases of which are imported from Hong Kong as aforesaid, without disclosing the country or place of origin of said watch cases is misleading and deceptive, because in the absence of a disclosure of the country of origin of said watch cases, the public understands and is led to believe that the said cases are either of domestic or Swiss origin.

There is a preference on the part of many persons in this country for watch cases of domestic and Swiss origin over watch cases manufactured in Hong Kong. The Commission has taken official notice of said general consumer preference for American-made and Swiss-made watch cases over watch cases manufactured in Hong Kong.

PAR. 6. Respondents in the course and conduct of their business for the purpose of inducing the sale of their said watches have caused, and now cause, to be marked upon their watch cases the words "water resistant" or "water protected", and have advertised certain of their watches as "water resistant" and "water protected". In truth and in fact, said watch cases are neither water resistant nor water protected.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of watches of the same general kind and nature as those sold by respondents.

PAR. 8. By the acts and practices aforesaid respondents have placed in the hands of retailers and others, a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the true metal composition of their watch cases, the country of origin of said watch cases, and the capacity of said watch cases to resist water intrusion.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

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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.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

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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 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 to issue herein, 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 such 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 Berco, 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 10 East 39th Street, in the City of New York, State of New York.

Respondents Ernest Grunwald and Ilse Grunwald are officers of said corporation, and their 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 respondents Berco, Inc., a corporation, and its officers, and Ernest Grunwald and Ilse Grunwald, individually and as officers 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 merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling watches, the cases of which are in whole or in part composed of base metal other than stainless steel which has been treated to simulate precious metal or stainless steel, without clearly and conspicuously disclosing on such cases or parts the true metal composition of such treated cases or parts.

2. Offering for sale or selling watches, the cases of which are in whole or in part composed of base metal which has been treated with an electrolytically applied flashing or coating of precious metal of less than $1\frac{1}{2}/1000$ of an inch over all exposed surfaces after completion of all finishing operations, without clearly and conspicuously disclosing on such cases or parts that they are base metal which have been flashed or coated with a thin and unsubstantial coating.

3. Offering for sale or selling watches, the cases of which are in whole or in part of foreign origin, without affirmatively disclosing the country or place of foreign origin thereof on the exterior of the cases of such watches on an exposed surface or on a label or tag affixed thereto of such degree of permanency as to remain thereon until consummation of consumer sale of the watches and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers.

4. Representing, directly or by implication, that their watches are "water resistant," it being understood that respondents may successfully defend the use of such representation with respect to any watch, the case of which respondents can show will provide protection against water or moisture to the extent of meeting the test designated test No. 2 of the Trade Practice Conference Rules for the Watch Industry, as set forth in the Code of Federal Regulations, Title 16, Chapter 1, Part 170.2(c) (16 CFR 170.2(c)).

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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

WELDON F. SAXON TRADING AS VENDOCRAFT, INC., ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-622. Complaint, Nov. 29, 1963—Decision, Nov. 29, 1963*

Consent order requiring an individual in St. Louis, Mo., engaged in the sale and distribution of vending machines under several trade names, to cease representing falsely in advertising in the "Help Wanted" columns of newspapers, that he was offering employment as the manager of a vending machine route, and representing falsely to persons responding to his advertisements that they would earn a substantial income from operating such routes.

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 Weldon F. Saxon, an individual trading and doing business as Vendocraft, Inc., A to Z Sales Company and Select-A-Vend, hereinafter referred to as respondent, has 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 Weldon F. Saxon is an individual trading and doing business as Vendocraft, Inc., A to Z Sales Company and Select-A-Vend, with his principal place of business located at 10067 Manchester Road, St. Louis, Missouri.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of vending machines to purchasers thereof located in various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business respondent causes said vending machines to be shipped from the place of business of the manufacturer thereof in the State of Minnesota

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into and through States of the United States other than the State of Minnesota to purchasers thereof located in such other states. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said vending machines in commerce, as "commerce" is defined in the Federal Trade Commission Act. His volume of business in such commerce is, and has been, substantial.

PAR. 4. In the course and conduct of his business, and at all times mentioned herein, respondent has been in substantial competition with corporations, firms and individuals in the sale of vending machines.

PAR. 5. In the course and conduct of his business, as aforesaid, respondent has published and caused to be published, advertisements in the "Help Wanted" and other columns of newspapers distributed through the United States mail, and by other means, to prospective purchasers in the several states in which respondent does business, of which the following are typical, but not all inclusive:

ROUTE MANAGERS

To service vending machines that dispense cigars, cigarettes, candy, cookies, etc.; can handle as own business on profit-sharing plans St. Louis (2), Belleville (1), Collinsville (1), East St. Louis (1), Springfield (1), Decatur (1), Jefferson City (1). A to Z Sales Co. 9842 Clayton Rd. Wy 1-2090.

Supervisor—Route

Handle vending route, dispensing cigars, cigarettes, cookies, etc.; can run as own business on profit sharing basis; part time or full time. WY 1-2090.

Route Managers Wanted

Part Time—Full Time

Mo. and Ill. Territories.

No selling; we place machines,

You fill machines with cookies,

snacks, candy and coffee; * * *,

investment according to size of route;

financing available. Vendocraft, 9842

Clayton Rd., St. Louis 24, WY 1-2090.

PAR. 6. By means of the statements appearing in said advertisements, as set forth in Paragraph Five, respondent represents, directly or by implication, that employment as the manager of a vending machine route is being offered.

In truth and in fact, respondent does not and did not offer employment to persons responding to his advertisements. His sole purpose in publishing and causing said advertisements to be pub-

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lished is, and was, to secure leads to prospective purchasers of vending machines offered for sale by respondent.

Therefore the aforesaid statements and representations were, and are, false, misleading and deceptive.

PAR. 7. In the course and conduct of his business, respondent makes oral representations to those persons who respond to his advertisements for the purpose of inducing, and which do induce, the purchase of the vending machines offered for sale by respondent. To such persons, respondent represents, directly or by implication, that persons who purchase said vending machines and operate a vending machine route will earn a substantial income therefrom.

In truth and in fact, persons who purchase vending machines from respondent and operate a vending machine route do not earn a substantial income from said vending machine route. In many instances, such persons fail to realize any net income from such vending machine routes.

Therefore, the aforesaid statements and representations were, and are, false, misleading and deceptive.

PAR. 8. 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 respondent's vending machines by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and inquiry of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an ad-

mission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such 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 Weldon F. Saxon is an individual trading and doing business as Vendocraft, Inc., A to Z Sales Company and Select-A-Vend, with his principal place of business located at 10067 Manchester Road, in the City of St. Louis, State of Missouri.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Weldon F. Saxon, an individual trading and doing business as Vendocraft, Inc., A to Z Sales Company, Select-A-Vend or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of vending machines or any other product do forthwith cease and desist from representing, directly or by implication, that:

- (1) Employment is being offered when the real purpose of such offer is to secure purchasers of vending machines or other products.
- (2) A person purchasing vending machines from respondent and operating a vending machine route can earn any specified amount of money when such amount is in excess of that which respondent can establish as being the earnings such person may reasonably expect to achieve.

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

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IN THE MATTER OF

JOSEPH LAUFER TRADING AS LACO SUPPLY COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-623. Complaint, Nov. 29, 1963—Decision, Nov. 29, 1963*

Consent order requiring a Los Angeles distributor of tools and drills to retailers, to cease misrepresenting, on packages in which said products were sold, the comparative price, quality, composition and superiority to competitive products of its 29-piece drill set.

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 Joseph Laufer, trading as Laco Supply Company, hereinafter referred to as respondent, has 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 Joseph Laufer is an individual trading and doing business as Laco Supply Company with his office and principal place of business located at 7716 Melrose Avenue, Los Angeles, California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of various kinds of tools and drills, including a twenty-nine piece drill set in which the individual drills are packaged in a cardboard container, to retailers for resale to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said merchandise, when sold, to be shipped from the State of California to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, for the purpose of inducing the sale of his merchandise, has made certain statements and representations on the package in which said drill sets are sold, of which the following are typical:

High Speed Drills * * * \$42.50 value

Finest high temper Chromium-Vanadium-Gun Metal, for use on steel, aluminum, brass, etc. * * * Hardened by a new process to improve wear