

Complaint

66 F.T.C.

IN THE MATTER OF

JACQUES KREISLER MANUFACTURING CORPORATION
ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8580. Complaint, June 28, 1963—Decision, Sept. 16, 1964*

Order requiring a North Bergen, N.J., distributor of metal watchbands to cease failing to disclose the Japanese origin of its watchbands.

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 Jacques Kreisler Manufacturing Corporation, a corporation, and Tobias Stern, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jacques Kreisler Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 9015 Bergenline Avenue, North Bergen, New Jersey, in the city of North Bergen, State of New Jersey.

Respondent Tobias Stern is president of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His 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 advertising, offering for sale, sale and distribution of, among other products, metal watchbands to manufacturers and distributors of watches as well as 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 watchbands, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times herein mentioned have maintained, a substantial course of

trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Said watchbands consist in whole or in substantial part of components which were manufactured in, and imported from Japan. When offered for sale or sold by respondents, said watchbands do not bear disclosure showing that they are substantially of foreign origin.

PAR. 5. In the absence of an adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise, or, substantial components thereof, is, therefore, to the prejudice of the purchasing public.

PAR. 6. By the aforesaid practices, respondents place in the hands of watch manufacturers, distributors and retailers, means and instrumentalities by and through which they may mislead the public as to the place of origin of said watchbands or the substantial components thereof.

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

PAR. 8. The use by respondents of the false, misleading and deceptive representations and practices hereinabove set forth, and the failure to disclose the foreign origin of their watchbands or of substantial components of their watchbands, have had, and now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair 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.

Mr. Herbert L. Blume supporting the complaint.

Mr. Herbert Burstein of *Zelby & Burstein*, New York, N.Y., for the respondents.

Initial Decision

66 F.T.C.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

MAY 25, 1964

This case involves, generally speaking, the omission to mark or otherwise disclose the foreign origin, Japan, of skeletons of metal¹ expansion watchbands, sold in the United States, allegedly in violation of Section 5 of the Federal Trade Commission Act.

The skeleton is the expansible part of an expansion watchband. It consists of links to which ornamental shells are in due time affixed, among other things.

Respondents' main contention is that their Japanese skeletons are not substantial parts of their watchbands, or at least of such of their watchbands as have only small skeletons attached to rigid ornamental "arms"² on each side, instead of large skeletons extending the full length of the watchbands. The hearing examiner rejects this contention, as he has a somewhat similar contention *In the Matter of Jacoby-Bender, Inc.*, D. 8587 (May 1, 1964), where, to be sure, the pertinent facts of record were less substantial than here.

Respondents also present a defense of discontinuance, based, however, on alleged discontinuance a few weeks prior to the issuance of the complaint. This defense is rejected by the examiner, as it also was in *Jacoby-Bender* (although there on alleged discontinuance, fortified by an affidavit, submitted over a year prior to the issuance of the complaint, but not by adequate proof as to subsequent behaviour).

Respondents herein also challenge the taking of official notice of consumer understanding and preference in connection with domestic merchandise as against foreign merchandise. They submit no opposing proof, but argue that any preference for domestic over Japanese goods is no longer the fact. In respect to official notice they also repeat their contention that small skeletons, at least, cannot be regarded as a substantial part of watchbands. The examiner rejects this challenge on official notice, as he did in *Jacoby-Bender*.

Respondents also challenge, in any event, the alleged individual liability of Tobias Stern, president of respondent corporation. Facts submitted by respondents compel a dismissal of the complaint as to respondent Stern. In the examiner's opinion, they indicate that the most that can be contended by complaint counsel is that Stern, owning about one-third, controls (actually not proved) through his family

¹ One type of small skeleton, CX 4B, varies by having some leather or simulated leather on top of the metal, i.e., the part corresponding to arms.

² Respondents' brief, page 5; elsewhere referred to therein as "arm."

one-half, and only one-half of the stock. This is as against Jacques Kreisler, unnamed as a respondent (for unexplained reasons), who is roughly in the same position as to one-third stock ownership and unproved half-control through the members of his family. The facts also show that the corporation is a large well-organized entity with diversified management, if not diversified stock ownership as well—rather than a mere cover for individuals. Finally, the facts show, without contradiction (respondents supplied all the facts on this issue of individual liability), that respondent Stern did not formulate, direct and control the particular acts and practices alleged in the complaint.

The complaint herein issued on June 26, 1963, and was served shortly thereafter. A timely answer was filed denying, in effect, any present sale of watchbands with Japanese components, and also denying that Japanese skeletons, as used in the past by them, represented a substantial component of their watchbands; respondents also denied any possible individual liability of respondent Stern. A "Supplemental Answer and Statement of Counsel" admits use of Japanese skeletons or parts "since June 1, 1961," with discontinuance of "purchase and use" approximately June 1, 1963; it also again denies that the skeletons or parts are substantial components, setting forth some supporting cost figures. An "Amended Supplemental Answer and Statement of Counsel" supplements the cost figures, but expressly limits them to "Marengo" and "Da Vinci" watchbands, both of which contain small skeletons attached to rigid ornamental arms.

A rather detailed prehearing conference order, dated October 21, 1963, was issued herein, supplemented by two subsequent orders, directing the submission of various preliminary statements, lists of witnesses and exhibits, and stipulations of fact as might be arrived at, as well as directing meetings between counsel prior to the prehearing conference with the examiner. Counsel on both sides are to be commended for cooperating fully. The said order of October 21, 1963, also gave notice that the examiner would take official notice as alleged in the complaint, and so construed as to apply to a substantial component of a watchband.

The prehearing conference took place on November 12, 1963, after counsel conferred with each other as directed. The minutes of the prehearing conference consist of 107 pages, and are not public. Various lists and papers were submitted as had been directed, and were discussed. Exhibits, so far as then submitted, were tentatively marked. Official notice was taken by the examiner (Prehearing Minutes, pp. 92, 94). (In view of the Stipulation Between Counsel, later entered

into and signed, it was agreed at the hearing proper that, although the prehearing minutes may be consulted, they in general should not be resorted to except to resolve ambiguities (TR 11:16-24,³ *i.e.* of the minutes of the hearing proper).)

The Stipulation Between Counsel herein was filed on or about March 5, 1964, *i.e.*, after the hearing proper, revising the prior proposed stipulation (CX 5A-E). It may be described as follows: (1) It stipulates as to most of the basic facts in this case. (2) It stipulates that if respondents called Mr. William Klein, a vice president and the controller, he would testify that a small skeleton serves merely as a "clasp" (Stip. 18). (3) It stipulates that Mr. Klein, if called, would also testify as to the relative cost of skeletons and completed watchbands, particularly as set forth in RX 3 and RX 7. (There is also the post-hearing affidavit of Mr. Klein (RX 9A-B) setting forth cost figures in tabular form as to both small and large skeletons.)

The said Stipulation Between Counsel does not include any agreement that respondent Tobias Stern formulates, directs and controls the acts and practices of corporate respondents, as alleged in the complaint, as did the proposed stipulation (CX 5A-E), and as had been tentatively agreed by counsel on both sides (TR 6).

The hearing, which was somewhat pro forma, was held on February 26, 1964. Respondents' counsel announced, for the first time, that Mr. Stern refused to sanction the proposed agreement that he formulates, directs and controls. Said counsel also stated that Mr. Stern was ill in the hospital and could not immediately testify on the issue. Complaint counsel finally agreed to take an affidavit, in lieu of testimony, covering stock ownership and other pertinent items suggested by the examiner (TR 8, 29, 30). The hearing was otherwise largely taken up with receiving in evidence the actual exhibits in the case, which required, in some instances, detailed identification.

Pursuant to the agreements between counsel, there were filed, after the hearing, various papers, to wit, the signed Stipulation Between Counsel, including the agreement that Mr. Klein would testify that a small skeleton was merely a "clasp," and the following affidavits:

RX 8A-D—affidavit by Mr. Klein, negating respondent Stern's individual liability. (Accepted by complaint counsel in lieu of affidavit by Mr. Stern.)

RX 9A-B—affidavit by Mr. Klein and annexed schedule as to relative cost of skeletons, both large and small.

The Stipulation Between Counsel, including Mr. Klein's conclusion

³ TR 11:16-24 means transcript (hearing minutes), page 11, lines 16 to 24.

as to "clasps," the aforementioned two affidavits, and the facts officially noticed, are in lieu of any testimony in this case (Stip. 19).⁴

Proposed findings and briefs were duly filed by both sides within the time allowed by the Rules.

FINDINGS OF FACT⁵

1. Respondent Jacques Kreisler Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 9015 Bergenline Avenue, North Bergen, New Jersey, in the city of North Bergen, State of New Jersey.

Respondent Tobias Stern is president of respondent corporation. He owns slightly more than $\frac{1}{3}$ of its stock, and members of his family own additional stock, bringing the family interest to exactly $\frac{1}{2}$, the same as the family of Jacques Kreisler, not a respondent, who himself owns slightly less than $\frac{1}{3}$ and is treasurer of respondent corporation.

There is no proof, certainly no sufficient proof, that said respondent Tobias Stern "formulates, directs and controls the acts and practices" of respondent corporation as described and alleged in the complaint, and respondents' uncontradicted proof is to the contrary of said allegation. (In addition, there is also no public interest in naming said respondent Tobias Stern, individually, as a party to a cease and desist order herein.)

(The facts as to the alleged individual liability of said respondent Stern are analyzed in detail below in the Discussion part of this decision.)

2. Respondent corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of, among other products, metal watchbands to manufacturers and distributors of watches, as well as to retailers for resale to the public. (Stip. 2) These watchbands are expansion watchbands.

3. In the course and conduct of its business respondent corporation now causes, and for some time last past has caused, its said watchbands, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Stip. 3)

⁴ Stip. 18 means Stipulation Between Counsel, paragraph 19.

⁵ Findings 1 to 8 correspond to paragraphs One to Eight of the complaint.

4. Said watchbands in substantial numbers (Stip. 5, 11), measured by respondents' watchband business, have consisted—in substantial part, determined largely by the expansibility function (see Discussion below)—of components, to wit, skeletons, manufactured in, and imported from, Japan (Stip. 10, 12). When offered for sale or sold by respondents, said watchbands have not borne disclosure showing them to be substantially of foreign origin, nor has disclosure been made in any other way (Stip. 9).

5. In the absence of an adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that it is of domestic origin (of which fact the Commission took official notice in the complaint).

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin (of which fact the Commission also took official notice in the complaint).

The aforementioned two categories of official notice, properly construed, in effect relate not only to products or articles as a whole, such as watchbands, but to substantial parts thereof, such as skeletons of watchbands. The examiner herein gave due and timely notice that he was taking official notice in this extended meaning (order dated October 21, 1963 (II-5)), and did take such official notice. Respondents offered nothing to disprove the facts noticed.

Accordingly, respondent corporation's failure to disclose clearly and conspicuously the country of origin of the skeletons of the watchbands herein is to the prejudice of the purchasing public, as alleged in the complaint.

6. By the aforesaid practices respondent corporation has placed in the hands of watch manufacturers, distributors, and retailers, the means and instrumentalities by which they may mislead the public as to the place of origin of the skeletons of said watchbands.

7. In the conduct of its business, respondent corporation has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by the respondent corporation.

8. The use by respondent corporation of the false, misleading and deceptive acts and practices, as hereinabove set forth, and the failure to disclose the foreign origin of its watchbands or substantial components of its watchbands have had, and now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

9. All of the facts contained in the Stipulation Between Counsel herein are found as facts herein—many of them, of course, being already found in the foregoing Findings, *i.e.*, 1 through 8.

Discontinuance

10. Apparently, the purchase, use, and sale of said Japanese skeletons by respondents were already taking place in 1961, *i.e.*, manufactured “since June 1, 1961” (Supplemental Answer, par. 1). Respondent corporation was initially contacted by the Commission on November 27, 1961; this contact eventually resulted in the issuance of the complaint (Stip. 14). The aforementioned purchase, use, and sale of such Japanese skeletons by respondents was also taking place through 1962 and part of 1963.

11. After correspondence and personal contacts between respondents and the Commission staff (Stip. 13), the “purchase and use of Japanese components in the corporation’s watchbands was discontinued approximately on June 1, 1963” (Supp. Answer, par. 3, apparently adopted by Stip. 13),⁶ *i.e.*, just prior to the issuance of the complaint on June 28, 1963.

12. There is nothing in the Stipulation, any proof in this case, or the answer, that respondent corporation discontinued anything but the “purchase and use” of undisclosed Japanese components, *i.e.*, there is no proof that it discontinued *selling* watchbands containing undisclosed Japanese components.

13. After issuance of the complaint “there were approximately 50,000 watchbands containing Japanese skeletons—unmarked as to foreign origin—in the hands of watch manufacturers, distributors, or retailers” (Stip. 6), said watchbands serving as potential “instrumentalities of deception” (Finding 6, *supra*).

14. Even if the discontinuance by respondent corporation of merely “purchase and use” of Japanese skeletons is evaluated, somehow or other, as equivalent to discontinuance, or substantial discontinuance, of the practices herein complained of, it would not be voluntary discontinuance in good faith but merely discontinuance only after the Commission’s hand was already on respondent’s shoulder. (See Discussion below.)

⁶ Actually there is no clear-cut statement in the Stipulation, or any affidavit, that respondents discontinued anything at all. But apparently counsel agreed on a conclusion that there was some kind of limited discontinuance, *i.e.*, of purchase and use at the time stated.

Initial Decision

66 F.T.C.

DISCUSSION

Certain issues involved herein may now be discussed and the relevant facts analyzed.

Skeletons as a Substantial Part

Point 1 in respondents' brief, and no doubt their main point, is that the skeleton is not a substantial part of their watchband. This question will now be considered in detail.

Varieties of Watchbands.—Complaint counsel, for his proof as to watchbands containing undisclosed Japanese skeletons sold by respondents, has relied on three types, each with the trade name Adjust-O-Matic, represented, respectively, by CX 4A, 4B and 4C. Respondents have relied on two types, with the respective trade names of Marengo and Da Vinci, represented by RX 1 and 2, and respondents' entire counterproof and argument, particularly on the issue of substantiality, is expressly predicated on these two styles with skeletons containing only 11 links each, *i.e.*, small skeletons with rigid ornamental arms. All five types are identified by respondents (Resp. brief, p. 3, bottom) by their respective exhibit numbers as manufactured by them.

The five types of watchbands are listed in the following tabulation, showing respectively the exhibit number, trade name and number of links in the skeleton:

Trade name	Exh. No.	Links in skeleton
Adjust-O-Matic.....	CX 4A	11
Do.....	CX 4B	16
Do.....	CX 4C	32
Marengo.....	RX 1	11
Da Vinci.....	RX 2	11

All five types have "arms" except CX 4C, the one shown having 32 links and except that CX 4B has leather-like extension, on metal, instead of arms proper. (There is also a CX 4D, with 32 links and no "arms," although not included in the stipulation (Stip. 12) as being "typical and representative.")

General Finding of Substantiality.—The examiner has found the skeletons of all these watchbands are substantial components thereof—*i.e.*, whether the skeletons contain 32 links and are attached to no arms on the watchband, or whether, on the other hand, they contain 16 or 11 links attached to arms or extensions. Respondents argue to the contrary, particularly as to skeletons with 11 links, and more particularly, those skeletons containing 11 links which are to be found in Marengo and Da Vinci watchbands.

Expansibility (Function).—The examiner's finding of substantiality is based primarily on the expansibility function of the skeleton in any of these expansible metallic watchbands—whether the skeleton has 11, 16, or 32 links, and whether or not it is attached to arms or the like on the watchband.

The unique and distinguishable feature of the metal expansion watchband is obviously its ability to expand and contract within the requirements for daily use. The expansible feature exists solely by virtue of the skeleton, whether the skeleton has many links or a few. The essence of the skeleton is a series of link-like springs joined together, link by link, so as to exercise the proper tension and expansibility. The addition to these springs, properly joined, of the decorative metal covering, of plates, and also of various mechanical services, so as to make them into a finished skeleton and part of an actual watchband cannot vitiate the aforescribed essence of the skeleton. Reference may be made to Trade Practice Conference Rules, Metallic Watch Band Industry, 16 CFR § 60.4, footnote 3, which applies to skeletons generally including, by its wording, a skeleton the length of which is a "substantial portion" of the watchband's length, and which reads as follows:

Parts which are to be considered as substantial include the skeletons or interliners of the expansion type bands, whether of the entire length of the band or but a substantial portion of such length, and whether caps and end pieces are affixed thereto before or after the importation of such skeletons or interliners.

Respondents in this case do not seem to argue against the substantiality of skeletons in general. They try, rather, to distinguish between large skeletons and small skeletons attached to arms in the watchband proper. Respondents claim, incidentally, although without actual proof, that small skeletons typify the larger part of their watchbands.

Watchband Arms (Style Appeal).—The examiner, however, based on his examination of the relevant exhibits, rejects respondents' argument, as to the 11 link skeleton and specifically those of Marengo and Da Vinci bands, that "the expansible feature is not controlling in consumer acceptance" but that the controlling factor "is the design of the rigid portion of the band (the arm) which is stylized for consumer appeal and acceptance," *i.e.*, so that the "use of expansible links serves only as a substitute for a conventional clasp as is used in the case of an ordinary leather band" (Resp. brief, p. 5). It is the examiner's opinion that, granted that the arms have style appeal, nevertheless a 32-link skeleton with its polished shells has its own comparable style appeal. It is the examiner's opinion that, except in a most strained sense, the 11-link skeleton is no more a substitute for a clasp than a 32-

line skeleton, and that the skeleton's dominant and essential function is to provide expansibility in all watchbands, whatever the size of the skeleton and whatever incidental function the skeleton may have in dispensing with a clasp or in providing extra style.

The examiner rejects as evidence the self-serving conclusion to the contrary of Mr. Klein (Stip. 18). In particular, after examining the various watchbands and skeletons, the examiner rejects Mr. Klein's conclusion that the skeleton of 22 links or less "serves merely as a substitute for a clasp." It almost seems that respondents reach out for the word "clasp" in an attempt to bring it within the wording, although it does not come within the meaning, of a sentence contained in the opinion of the *Heller* case, *infra*. 191 F. 2d 954, 956 (C.A. 7th, 1951).

Other Parts Claimed to be Substantial.—Again picking out the Marengo (RX 1) and Da Vinci (RX 5) styles, each with skeletons of 11 links plus arms, respondents point out (Resp. brief, p. 4) that there is a "large variety of separate components (Exhibit Nos. RX 2A–J, RX 6A–F) constituting the entire band." They conclude from this that "the skeleton is an infinitesimal part of the entire band," *i.e.*, "by examination of the watchbands" (Resp. brief, p. 3).

The examiner's opinion is to the contrary. None of these other parts, so far as the record shows, bear on the expansibility function, which has here been found to be controlling on the question of substantiality.

For instance, the decorative metal covering and plates added to the skeleton proper, *i.e.*, to the springs, properly joined, do not detract anything from the functional essentiality of the skeleton in an expansion watchband. Nor, to take another part, does the protective mesh do so; this is the part which respondents are referring to in their brief, although without record support, as being of German origin in certain watchbands (Resp. brief, p. 2).

Secondly, these other parts do not vitiate the substantiality of the skeleton in any important respects apart from the expansibility function, such as relative size and cost, which will now be discussed.

Relative Size.—Even an 11-link skeleton is, unexpanded, one-third the circumference of the full watchband, as the examiner has directly observed on viewing the pertinent Marengo and Da Vinci exhibits—which is substantial in size, relatively speaking, by ordinary standards. Moreover, if fully expanded, the 11-link skeleton is definitely the larger part of the watchband, as the examiner has observed by fully expanding the Marengo and Da Vinci watchband exhibits—although he does not stress this particular point.

Cost of Production (Relative Cost).—Respondents have supplied figures to the effect that the production cost of Marengo and Da Vinci

skeletons are respectively, by their percentage computation, 7.6% and 5.8% of total factory cost (Resp. brief, p. 4).

In the examiner's opinion, the fact that production cost of the skeleton is not a major part of the cost of the watchband, *i.e.*, in some of the watchbands, to wit, Marengo and Da Vinci with 11-link skeletons, is hardly controlling on the question as to whether the skeleton is a substantial part of the watchband. Whatever weight may be given to this factor it would seem that more weight is to be accorded to the expansibility function of the skeleton as part of an expansion watchband.

In arriving at the percentage cost production of Marengo and Da Vinci watchbands, containing 11-link skeletons, respondents show in the figures submitted by them that a Marengo skeleton cost them \$.166 compared to a total manufacturing cost for the band of \$2.171, and a Da Vinci skeleton cost them \$.133 as compared to a total manufacturing cost of the band of \$2.274 (RX 9B).

However, to begin with, there is nothing to show that these figures are typical of other watchbands. Indeed, the figures in respondents' tabulation (RX 9B) for other watchbands, when compared with the Marengo and Da Vinci figures, tend to indicate that the Marengo and Da Vinci figures are peculiar to these styles, with their rigid ornamental metal arms and only 11 links to a skeleton—certainly as contrasted with watchbands containing no rigid arms and 32 or more links.

In other words, the Marengo and Da Vinci figures seem to reflect the extra cost of the rigid arms, both in material and labor, which take the place of many of the full number of skeleton links, and to reflect the concomitant lesser cost of a skeleton containing only a relatively few links. This extra labor cost is further reflected in "extra factory overhead" figured at 200% of total labor. For instance, the figures in respondents' tabulation (RX 9B) show the following, to pick out two contrasting styles:

	Marengo (11 links)	Citation (34 links)
Material		
Skeleton.....	\$. 166	\$. 333
Other material.....	. 807	. 387
Total.....	. 973	. 720
Loss (10%).....	. 097	. 072
Labor		
Labor.....	. 334	. 139
Loss (10%).....	. 033	. 014
Factory overhead		
200% of total labor.....	. 734	. 306
Factory mfg. cost.....	2. 171	1. 251
* * *	* *	
Wholesale price.....	5. 50	3. 25
Retail price.....	15. 00	8. 95

Initial Decision

66 F.T.C.

It will be noted in the tabulation (RX 9B) that figures are supplied, in all, for five different brands of respondents' watchbands, tabulated as follows to show the number of links to the skeleton, and the ultimate retail selling price:

	<i>Retail price</i>
Marengo (11 link) -----	\$15. 00
Da Vinci (11 link) -----	15. 00
Twin Line (16 link) -----	12. 50
Lido (22 link) -----	9. 95
Citation (34 link) -----	8. 95

An examination of all the figures in the tabulation indicates a progression of extra cost, including labor (and overhead estimated thereon), of the watchbands as the number of links of the skeletons become smaller. However, it must be noted that none of these watchbands except Marengo and Da Vinci are in evidence; the watchbands relied on by complaint counsel are Adjust-O-Matic.

Accordingly, all that the figures in the tabulation apparently indicate, so far as consumers are concerned, is that the public is willing to pay extra for expansible watchbands with stylish arms—the longer and more ornamental the arms the more the public will pay—provided that the shorter and therefore cheaper skeletons perform the required expansibility function. In the examiner's opinion, this proves little more than that the public would be willing to pay extra for diamonds or other precious stones on the rigid arms, but at the same time would not, of course, accept the watchband if it did not have the necessary and essential expansible skeleton component.

Adjudicated Cases.—Respondents cite *Heller & Sons, Inc.*, 47 F.T.C. 34 (1950) for the proposition, by way of analogy, that it is not necessary to show the origin of imported glass beads inasmuch as the identity of the glass beads is lost in the manufacture of the final product. Actually, holding in *Heller* is more affirmative, namely, that it is necessary to show the origin of imported imitation pearls as contrasted with imported glass beads processed in the United States into imitation pearls. It is the examiner's opinion that the imported expansible skeleton is definitely more analogous to the imported imitation pearls than to the imported glass beads. The consumer here wants an expansible skeleton, *i.e.*, to operate an expansion watchband, just as the consumer wants to wear at least a semblance of a pearl necklace, not merely a string of glass beads.

To be sure, the consumer in the case at bar may, in addition, desire ornamented arms, adding to the cost, with a reduced skeleton—but the consumer still wants an expansible skeleton, even though small, in order to have an expansion watchband.

Moreover, the identity of the skeleton, even a small skeleton, is plainly not lost in the manufacture of the watchband—in the examiner's opinion, based on his own observation of the exhibits, although entirely contrary to respondents' contention in their brief.

Respondents also cite the *Heller* case, as passed on by the Court of Appeals, affirming the Commission below—191 F. 2d 954 (C.A. 7th, 1951). However, it turns out that they cite it for the statement in the court's opinion that the "consumer purchases an imitation-pearl necklace not because of * * * the clasp which joins its ends, but because of the imitation pearls which are thus assembled * * *" (p. 956). Respondents then characterize at least their small skeletons as being merely "clasps," a conclusion already rejected by the examiner herein as apparently merely an attempt to come within this wording, although it does not come within its meaning.

Respondents cite *Segal v. F.T.C.*, 142 F. 2d 255 (C.C.A. 2nd, 1944), also affirming the Commission below (34 F.T.C. 218). The case involves the importation of Japanese lenses for cheap spectacles and sunglasses, later fitted into frames in the United States.

Respondents cite the case, despite its requirement of disclosure, because the opinion states that it agrees with the argument that disclosure would not be required if "marking would be positively misleading, unless indeed it was so qualified as to be ineffective" (p. 255). The opinion points out that this "is not the case with lenses used in spectacles," and respondents here contend that this is indeed the case—*i.e.*, that marking would be misleading or ineffective—with skeletons, or at least small skeletons, used in watchbands.

In attempting to distinguish the present case from *Segal*, respondents are perhaps relying on the sentence in that case reading as follows (pp. 255-6) :

That is not the case with lenses used in spectacles; the frame is merely the carrier of the lens, which is the only element of importance, and which does not lose its identity either in appearance or in function.

At least as to Marengo and Da Vinci watchbands, with only 11-link skeletons and rigid ornamental arms, respondents in effect argue that unlike the lenses in spectacles, skeletons are not the "only element of importance" in watchbands. However, even if this should be strictly so, the hearing examiner, as already indicated, regards the skeleton as the dominant element of importance—even if not the only such element—due to its expansibility function; and, of course, he regards it as indeed the only element of importance so far as expansibility of the expansible watchband is concerned, irrespective of the size of the skeleton or the size or other attributes of any arms.

Moreover, the examiner holds, using the language of *Segal*, that

any watchband herein with 11 links "does not lose its *identity* either in appearance or in function" (our emphasis), despite respondents' contention to the contrary. So far as appearances are concerned, the skeleton, as observed in the completed watchband, clearly retains its identity as such even when it contains only 11 links. So far as function is concerned, namely to provide expansibility, the continued identity of the skeleton, after becoming part of the watchband, is unassailable.

Again using the words of *Segal*, it is the examiner's opinion that disclosure herein would not be "positively misleading, unless indeed it was so qualified as to be ineffective." Incidentally, the order signed by him herein provides for an alternative of labeling or tagging the watchband, which gives much greater opportunity for clear and explicit disclosure, and also enables the disclosure to be removed from the merchandise by the ultimate buyer.

Respondents' final argument that to conclude that the skeleton, or a small skeleton, is a substantial component is to "distort dictionary and other definitions" is without merit in the examiner's opinion, on all the facts as herein analyzed. Moreover, since the Commission has issued the complaint herein largely to protect the consumer, it is eminently appropriate that "substantial" be defined according to what the consumer would regard as substantial in purchasing an expansion watchband, namely, the skeleton which makes expansibility possible.

The case closest in facts to the present case is *Baldwin Bracelet Corporation v. F.T.C.*, D. 8316 (Oct. 2, 1962) [61 F.T.C. 1345], *affirmed* 325 F. 2d 1012 (C.A., D.C., 1963). That case involves metal expansion watchbands (p. 1), as here. The skeleton was made in Hong Kong (p. 9), giving the bands the "expansibility" found to be, although on expert testimony, "the essential element of an expansion watchband" (p. 9). However, the tube ends and also the gold-filled top shells (in one of the two types) were affixed in Puerto Rico, where, also, the "polishing" of the finished band was performed (p. 7). The watchbands in that case were held to be "substantially manufactured in Hong Kong" (p. 9).

In the two sentences devoted to this case (Resp. brief, pp. 5-6) respondents declare that their Marengo and Da Vinci watchbands differ from the *Baldwin* watchbands. The examiner agrees that they differ, *i.e.*, by reason of the "arms" to which small skeletons are in due time attached. However, in the examiner's opinion, after careful consideration, the difference is a matter of degree which reasonably and fairly can be, and hereby is, found not to call for a different conclusion than that reached in *Baldwin*.

The examiner also agrees with respondents that the facts *In the*

Matter of Manco Watch Strap Co., Inc., D. 7785 (March 13, 1962) [60 F.T.C. 495], are not helpful on the issue of substantiality in the present case. This is because the entire watchband, not merely the skeleton, was made in the foreign country under the facts proved in *Manco*.

Individual Liability of Respondent Stern

The complaint alleges in paragraph 1 as follows:

Respondent Tobias Stern is President of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth.

The answer admits that he is president (par. 1), but it is denied therein that he formulates, directs and controls.

Complaint counsel has submitted no proof that respondent Stern formulates, direct and controls, except that he is president (admitted by answer) and except that he attended one conference with other watchband manufacturers to discuss and review the Trade Practice Rules for the industry (Stip. 15).

Respondents, although they do not have the burden of proof, produced proof in the form of an affidavit (RX 8A-D) by William Klein, a vice president of the corporate respondent, which definitely negates the allegation that respondent Stern formulates, directs and controls, as set forth in the complaint, and certainly negates any possible presumption favoring the proposition. The examiner's further comments here will follow the order of presentation of facts in this affidavit by Mr. Klein.

According to the affidavit, respondent Stern owns slightly more than one-third of the stock of respondent corporation, to wit, 38.05%. Members of his family own the balance of one-half of the stock, to wit, 11.95%.

Balancing this, however, Jacques Kreisler owns slightly less than one-third, to wit, 28.41%, and "members of his family" own the balance of one-half of the stock, to wit, 21.59%.

The affidavit also states (pp. 1-2): "The stock owned by members of Mr. Stern's family is owned outright by them and is under their sole control. Tobias Stern has no power with respect thereto. * * * As in the case of members of Mr. Stern's family the members of Mr. Kreisler's family own their stock outright and the stock is under their sole control."

The allegation of the complaint that Stern formulates, directs and controls, is not proved, *i.e.*, by stock ownership and control alone, since at the very most he formulates, directs and controls, if at all, only together with Jacques Kreisler, and in actuality formulation, direction

and control is at the very most equally divided between the Stern and Kreisler families. The members of the two families, furthermore, are stated to have sole or exclusive control of their own respective holdings, thus negating even fifty-fifty control by Stern and Kreisler.

Just why Jacques Kreisler is not made a respondent herein, in the complaint directed against the Jacques Kreisler Manufacturing Corporation, is a mystery to the examiner. This factor by itself makes it quite impossible for the examiner conscientiously to evaluate Stern's actual power status in the affairs of the corporate respondent and particularly to determine it to be a controlling one.

Of course, ownership of stock of itself is not necessarily proof of formulation, direction and control—however much it may persuade, say, where an individual and his wife own 100% of the stock of a small corporation. Moreover, complaint counsel's intimation in his brief that Stern has a superior position to Kreisler because he himself owns more than one-third whereas Kreisler owns less than one-third of the stock, is without merit, as neither minority interest could of itself be controlling.

The same equal division between the two families appears in the setup of the board of directors which, as a matter of law, is vested with the control and operation of the corporation. Stern and a member of his family are two of the four members of the board of directors. Kreisler and a member of his family are the other two members. (RX 8B).

The two top officers of the corporation are Stern and Kreisler. Stern is president and Kreisler is treasurer. It is well known that the treasurer of a corporation may often be a more powerful figure than the president, who may be only a figurehead. The examiner cannot agree with complaint counsel that the president of a corporation—particularly of a "two-family" corporation as here—is to be deemed vested with authority to formulate, direct and control. Rather, he agrees with complaint counsel's more fundamental statement (brief, p. 5, 1st par.) that basic power lies with the board of directors, as agents for the stockholders.

There are six other officers of the corporation, a secretary and five vice presidents. Although the affidavit does not so state, it may well be that these officers, particularly the five vice presidents, are members, or representatives, of both families.

In addition, according to the affidavit, there is a so-called executive committee, although the examiner discounts the legal significance thereof in this case. The executive committee is composed of all eight officers, meeting periodically to review and establish policy for a

particular matter, and is not, according to the affidavit, controlled by any one person, including Mr. Stern (RX 8C). The examiner agrees with complaint counsel that this is not the usual type of executive committee, such as one composed of part of the board of directors, an interim body acting under direction of the board, or a steering committee. Even as described in the affidavit, the so-called executive committee fits in the examiner's surmise of a corporation perhaps controlled by two persons, Mr. Stern and Mr. Kreiser, but actually controlled at best, on the facts set forth in the affidavit, by the two families.

Of much greater significance than this so-called executive committee is the fact that the firm is not just a small family corporation with few employees, if any. It has 600 employees. It has appropriate departmental heads—sales manager, advertising manager, director of market research, production supervisor, chief engineer, purchasing agent and quality control engineer. It retains accountants and attorneys.

A corporate setup such as one indicated by these facts, including what would appear to be at most a loose two-family control, makes most unlikely any circumvention of a cease and desist order against the corporation by the setting up of a new corporation by respondent Stern.

The affidavit (CX SD) also states that the importing of skeletons was the direct result of recommendations, not by respondent Stern, but by the vice president in charge of export operations. The matter, according to the affidavit, was then reviewed by the various departmental heads, who submitted their analyses and opinions to the executive committee for review and decision, in the further light of legal counsel.

This, in the examiner's opinion, means two things. First it means that respondent Stern did not initiate the idea of importing foreign skeletons, nor is there any proof that he formulated it or the actual practices followed. Secondly, it means that, although it can be conjectured that he did vote for them and although he undoubtedly did stand by while the practices took place, the decision was, to follow the reasoning set forth above, not his alone, but at the very most perhaps his and Kreiser's, and actually in a rough sense that of the two families.

There are two aspects of this question as to whether an officer of a corporation, which has been held by the Commission to have violated the law, should be held individually liable. First, there is the question as to whether the officer formulated, directed and controlled the acts and practices constituting violation by the corpora-

tion. Secondly, and perhaps more important, there is the question as to whether the public interest requires that an order be entered against the officer individually—considering that he is expressly bound by the order in any event as an officer, even though not designated by name.

In view of both the divided ownership of respondent corporation here and of its size and organizational setup, as well as the almost complete absence of any affirmative proof as to Stern's formulation, direction and control of the unlawful practices, it seems quite impossible for the examiner to hold him individually liable on any reasonable basis. Secondly, on the issue of public interest, the examiner would adhere to this conclusion even assuming that individual liability can attach, by reason of public interest, on less than a full and clear showing of individual formulation, direction and control, as actually alleged in the complaint in this case.

Complaint counsel herein cites no cases in support of his contention that respondent Stern should be held individually liable. Respondents cite and quote *In the Matter of Wilson Tobacco Board of Trade*, 53 F.T.C. 141, 190 (1956).

Although it is announced in decisions of the Commission quoted below that it has "wide discretion" in determining the necessity of imposing individual liability on an officer of a corporate violator, it is also definitely indicated that individual liability will not be imposed in the absence of "special circumstances" indicating a likelihood that the officer will cause evasion of the order against the corporation, or in the absence of some "special reason" why individual liability should be imposed.

In the Matter of Maryland Baking Company, 52 F.T.C. 1679, 1691 (D. 6327; 1956), the Commission states:

The record does not reveal that Joseph Shapiro dominated respondent corporation or that he, in an individual capacity, was responsible for the acts and practices alleged to be unlawful. That he was Chairman of the Board and Treasurer of respondent corporation is not enough to show an individual responsibility. There is no showing, moreover, of any *special circumstances* which would indicate a likelihood that Joseph Shapiro would cause an evasion of the order against the corporation. He is, in any event, bound by the order as a corporate officer. In the absence of some *special reason* for naming Joseph Shapiro personally, the order against the corporation, and its officers, representatives, agents, and employees, would seem to be adequate. (Emphasis ours.)

In the Matter of Kay Jewelry Stores, Inc., 54 F.T.C. 548, 560-1 (D. 6445; 1957) the Commission, citing *Maryland Baking*, stated in a per curiam opinion:

The Hearing Examiner based his conclusion on individual liability upon the fact that the complaint alleged and the answer admitted that the individual respondents are officers and directors of the corporations, and that said individuals formulate, direct and control the policies, acts and practices of the corporate respondents. The record is devoid of any other evidence or showing of circumstances to support a conclusion that individual liability should attach.

We do not consider the foregoing facts alone sufficient justification in this instance for including the officer respondents as respondents in their individual capacities. The Commission has *wide discretion* in determining the necessity of attaching individual liability to insure the full effectiveness of an order to cease and desist. But where there is no record evidence showing justification and where "no other circumstances appear pointing to the necessity of directing the order against these parties in their individual as distinguished from their official capacities", their inclusion as individuals should not be approved. (Emphasis ours.)

The citation to the matter in quotation marks is from *Wilson Tobacco Board of Trade, supra*.

It is true that in a fairly recent case, *In the Matter of Product Testing Company, Inc.* (D. 8534, Feb. 17, 1964) [64 F.T.C. 857], the Commission did impose individual liability on the corporate officer. However, in that case the officer owned the majority of the stock, the rest being owned by his father. Moreover, on the actual proof in that case, it is quite clear that there were both "special circumstances" and "special reason" for holding the officer personally liable.

Moreover, reference may also be made here to *Pati-Port, Inc. and Wolf v. F.T.C.* (C.A. 4, January 17, 1963; D. 7665). In that case the court upheld the Commission in imposing individual liability on the president of the respondent corporation, stating that:

it would seem in cases of this sort to be a futile gesture to issue an order directed to the lifeless entity of a corporation while exempting from its operation the living individuals who are responsible for the illegal practices.

However, it is submitted that the facts of that case are distinguishable from those of the case at bar, even bearing in mind that respondent Stern here stood by while the corporate respondent's illegal practices were taking place as did the officer respondent in *Pati-Port, Inc.*

Discontinuance—Likelihood of Resumption

The original contact of the Commission with respondents, leading ultimately to the issuance of the complaint, was on November 27, 1961 (Finding 10). It was over a year and a half before the claimed, although incomplete and meagerly documented, discontinuance of the unlawful acts. After correspondence between respondents and the Commission staff the "purchase and use of Japanese components in the

corporation's watchbands was discontinued, approximately on June 1, 1963" (Answer, par. 3, as adopted by Stip. 13 in reference to undisclosed components). But there is no intimation that the *sale* by respondents of watchbands containing undisclosed Japanese components was discontinued as of even that time.

Even this claimed, although incomplete and weakly documented, discontinuance was just prior, by a few weeks, to the issuance of the complaint herein, June 28, 1963.

Moreover, respondents agree that about 50,000 of the watchbands containing undisclosed Japanese skeletons were in the hands of watch manufacturers, distributors or retailers even after issuance of the complaint (Stip. 6; Finding 13). Even if respondents' or respondent corporation's incomplete discontinuance were to be regarded as actual discontinuance, it would be discontinuance only when "the law's hand was already on its shoulder" (*In the Matter of Coro, Inc.* (D. 8346, p. 15, November 6, 1963)) [63 F.T.C. 1164]. Such tardy discontinuance, complete or incomplete, does not augur well for the withholding of a cease and desist order. Except in a very exceptional case, it strongly indicates that an order should issue.

Such discontinuance, or purported discontinuance, cannot easily be construed as a voluntary discontinuance in good faith. It is an act of repentance and mending of ways after being caught, warned, allowed ample time for discontinuing, and still continuing until after the Commission has, presumably, more or less decided to take legal action. "Dismissal is rarely warranted * * * where a party waits until the Commission has acted and only then discontinues his illegal practice." *In the Matter of Ward Baking Co.*, 54 F.T.C. 1919, 1920 (D. 6833; 1958).

The purported discontinuance, moreover, was, as already indicated, not discontinuance of the unlawful acts alleged in the complaint, to wit, selling watchbands in commerce containing undisclosed Japanese components. Obviously, on this proof in support of respondents' special defense of discontinuance, the fact is that the corporation continued to sell its watchbands with undisclosed Japanese skeletons even after June 1, 1963, and after the issuance of the complaint shortly thereafter—perhaps for quite some time thereafter.

Moreover, since respondents admit at least that approximately 50,000 such watchbands were in the hands of manufacturers, distributors or retailers subsequent to the issuance of the complaint, these watchbands continue to serve as instrumentalities (complaint Six) of deception placed in their hands by or through respondents. There is not the slightest suggestion that respondents either attempted to get

these watchbands back, or to advise those holding them to make disclosure.

Under the circumstances of claimed discontinuance herein, regarded even as completed and fully proved, it can hardly be found that the challenged practices "have been surely stopped under circumstances which assure that there is no reasonable likelihood of resumption," the second element of the defense (*In the Matter of Tung-Sol Electric*, D. 8514, p. 15, affirmed by the Commission, September 12, 1963) [63 F.T.C. 632]. Any discontinuance under the circumstances shown here has been too halting and too late to be regarded very seriously.

There is an additional circumstance, which also is not favorable to respondents' defense. Respondent corporation is the second largest manufacturer of watchbands in the United States (Stip. 8). Accordingly, it is reasonable to believe that it either now exports watchbands to countries outside the United States, or may well do so in the future, particularly watchbands with Japanese skeletons not encountering American predilections against foreign merchandise. The corporation is by law under no prohibition, of course, against importing Japanese skeletons. Likewise it is by law under no prohibition against exporting watchbands containing Japanese skeletons, origin undisclosed, nor, presumably, from selling them. However, even if these acts are altogether lawful, there would always be the reasonable possibility that substantial quantities of such imported Japanese skeletons could be diverted inadvertently, if not deliberately, to watchbands sold in the United States instead of being exported.

Such possibility cannot be ruled out as mere conjecture. Respondents have presented their defense as to discontinuance without revealing the actual facts, and largely by pointing in a stipulation to a statement of discontinuance in their answer. This invites reasonable conjecture on an issue such as likelihood of resumption as part of the question of discontinuance.

In the light of the above discussion, it accordingly appears to be abundantly clear that from whatever angle this subject is pursued, respondents' defense of discontinuance must be disallowed.

OFFICIAL NOTICE

Respondents attack (Resp. brief, pp. 7-9) the official notice taken herein, construed or extended to include the skeleton of the watchband, on the ground that *In the Matter of Manco Watch Strap Co., Inc.* (D. 7785, March 13, 1962) [60 F.T.C. 495], sanctioning official notice, "is not applicable since the item involved there was a complete metal expansion band whose origin was foreign" and Commission

precedents sanction such official notice only "where the complete item has been manufactured in the foreign country or where the essential component of the item has been manufactured in the foreign country." However, even according to respondents' views, the question thus turns out to be whether the expansible skeleton—even a small skeleton attached to rigid arms—is "the essential component" of the expansion watchband. The examiner believes that it may reasonably be held to qualify under this test, although the finding and conclusion here is that the skeleton, of whatever type in the present matter, is a substantial component of the watchband. This simply invokes the whole question of substantiality, which has been fully discussed herein, and is probably determinative of the official notice question.

It may also be in order to observe here that *Manco* does not purport to cover the entire subject of notice which may be taken by the Commission. Such notice may be said to include, depending on nomenclature, not only official notice, but judicial notice, and also, lastly, the general power to declare presumptions or to note matters of common knowledge. As a possible example of the last, reference may be made to *In the Matter of Federal Cordage Company*, 49 F.T.C. 1312, 1321 (D. 5951; 1953) where, citing only "common knowledge" the Commission in effect took notice as to consumer understanding and preference in a non-disclosure case.

Respondents have one, and only one, further argument, namely, that "the standard employed by Japanese manufacturers have improved immeasurably and the consuming public in many instances accepts items of Japanese origin as being equivalent to, or better than, similar items manufactured in the United States," pointing out as examples "transistors, cameras, etc." The argument must be disregarded because it is not supported by proof. Under § 3.14⁷ of the Rules of the Commission, where official notice is taken "opportunity to disprove such noticed fact shall be granted any party making timely motion therefor." Respondents made no such motion, nor did they avail themselves of the opportunity to disprove the official notice taken herein. Respondents had ample notice, both from the complaint itself and the prehearing conference proceedings of the taking of official notice. They chose to rely solely on the question as to whether or not the Commission, or the hearing examiner, has the power to take the official notice.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein.

⁷ § 3.14 (d).

2. The complaint herein states a cause of action and this proceeding is in the public interest, subject to the dismissal of the complaint as against respondent Tobias Stern, individually.

3. Respondent Jacques Kreisler Manufacturing Corporation has not established its affirmative defense, to wit, of discontinuance, and there is sufficient likelihood of further acts and practices by it found herein to be unlawful.

4. The acts and practices of respondent Jacques Kreisler Manufacturing Corporation, as herein found, have been to the prejudice and injury of the public, and presumably of the competitors of said respondent, and have constituted 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.

5. An order to cease and desist shall issue against said corporate respondent, as well as against such other persons described or indicated in the below order.

6. The complaint is dismissed as to respondent Tobias Stern, individually.

COMMENTS ON ORDER

The proposed order of complaint counsel is adopted as the order in this case except as follows:

1. Respondent *Tobias Stern* is not named individually in the below order; this results in the omission of the following in the prefatory part of the proposed order “, and Tobias Stern, individually and as an officer of said corporation, and” and also in the change to “agents” from “respondents’ agents.”

2. The below order relates only to dealings in watchbands, and to accomplish this, the words “or any other products,” appearing in the prefatory part of the proposed order, are deleted. The examiner believes that on the actual facts and proof in this case it is unnecessary in the public interest to order that the respondent corporation cease and desist in connection with products other than watchbands.

3. In the portions of the below order which provide an alternative to marking or stamping the products themselves, the wording used is “likely to be observed” instead of “to be likely observed.”

ORDER

It is ordered, That respondent Jacques Kreisler Manufacturing Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watchbands,

in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any such products which are substantially, or which contain a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping 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 products, and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers making casual inspection of the product.

2. Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

3. Placing in the hands of manufacturers, distributors, retailers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

It is further ordered, That the complaint be and hereby is dismissed as against respondent Tobias Stern, individually.

FINAL ORDER

The hearing examiner having filed his initial decision herein on May 25, 1964, and in the absence of any appeal from the initial decision, and the Commission by order dated June 16, 1964, having stayed the effective date of the initial decision with respect to Tobias Stern, individually, and by order dated June 30, 1964, having stayed the effective date of the initial decision with respect to Jacques Kreisler Manufacturing Corporation, and now having determined that this case should not be placed on its own docket for review:

It is ordered, That the initial decision of the hearing examiner filed May 25, 1964, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the complaint against respondent Tobias Stern, individually, be, and it hereby is, dismissed.

It is further ordered, That the motion of respondent Jacques Kreiser Manufacturing Corporation filed July 24, 1964, requesting that the complaint herein be dismissed be, and it hereby is, denied.

It is further ordered, That respondent Jacques Kreiser Manufacturing Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist set forth in the initial decision.