

accepting the return of its unsold products to any purchaser of said products bought for resale, with or without processing, unless such service or facility is accorded on proportionally equal terms to all purchasers competing in the resale of said products.

IN THE MATTER OF
ACCRO WATCH COMPANY, INC., ET AL.

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

Docket 8639. Complaint, August 24, 1964—Decision, Dec. 2, 1965

Order requiring a New York City importer of watches and watchcases to cease misrepresenting the guarantee on its watches and the composition and origin of its watchcases.

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 Accro Watch Company, Inc., a corporation, and Joseph Udell, 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 Accro Watch Company, 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 580 Fifth Avenue, in the city of New York, State of New York.

Respondent Joseph Udell is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including 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 offering for sale, sale and distribution of watches to retailers for resale to the public, under the trade names "Accro," "Gaylord," "Royal Geneva," and "Invicta."

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The cases of certain of the watches offered for sale and sold by respondents 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. Said watchcases 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 have 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.

PAR. 5. The cases of certain of respondents' watches have bezels which have the appearance of being rolled gold plate, gold filled or solid gold. Certain of these watches are marked "5 micron bezel." 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. 6. The cases of certain of respondents' watches are imported from Hong Kong and France and this is not disclosed except by marking on the inside of the cases, which cannot be seen after the watch movements have been assembled into the cases. These watchcases house movements which are imported from Switzerland, and when delivered to respondents' customers for resale, the watches are marked "Swiss" on the dials.

In the absence of an adequate disclosure that the aforesaid watchcases are of Hong Kong or French origin, the public believes

and understands that they are of domestic or Swiss origin, a fact of which the Commission takes official notice.

As to such watchcases, a substantial portion of the purchasing public has a preference for domestic or Swiss products, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country or place of origin of said watch cases is, therefore, to the prejudice of the purchasing public.

PAR. 7. Respondents state on tickets placed in conjunction with their watches, on certificates or cards which accompany their watches, and in certain advertising material, that their watches are "BONDED," and are accompanied by a "Guarantee Bond."

Respondents thereby represent, directly or by implication, that they have executed a bond, agreement or insurance policy which is supported by a fund set aside by respondents or another party for the purpose of assuring fulfillment of the terms of respondents' guarantee.

PAR. 8. In truth and in fact, respondents have not executed a bond, agreement or insurance policy which is supported by a fund set aside by respondents or any other party for the purpose of assuring fulfillment of the terms of respondents' guarantee or for any other purpose.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their business, respondents cause to be placed in conjunction with their watches, guarantee certificates or cards which state that the watch " * * * is guaranteed against any inherent defects in material and workmanship for one year from date of purchase." This statement of guarantee does not disclose what one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, the manner in which the guarantor will perform under the guarantee, or the full identity of the guarantor.

The aforesaid practice has a tendency and capacity to mislead members of the purchasing public unless the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder, and the full identity of the guarantor are clearly and conspicuously disclosed.

PAR. 10. By and through the acts and practices hereinafter set forth, respondents place in the hands of retailers and others the means and instrumentalities whereby retailers and others may

mislead the public as to the metal composition and the country or place of origin of their watchcases, and the nature and extent of their guarantee.

PAR. 11. 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. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' watches by reason of said erroneous and mistaken belief.

PAR. 13. 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. Sheldon Feldman supporting the complaint.

Simon & Graff, New York, N.Y., by *Mr. Leonard M. Simon* for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

JUNE 9, 1965

The Federal Trade Commission issued its complaint against respondents on August 24, 1964, charging them with violations of Section 5 of the Federal Trade Commission Act for failure to disclose the true metallic content of the bezels of certain of the watches assembled and sold by respondents and for failure to disclose the foreign origin of certain cases for watches which the respondents assembled and sold. The complaint also charged respondents with representing that their watches were bonded and guaranteed without disclosing the true terms of the bond or guarantee and further charged respondents with placing deceptive means and instrumentalities in their customers' hands by which they mislead the public. The respondents filed an answer in which they admitted certain allegations of the complaint and denied that they had violated Section 5 of the Federal Trade Commission Act.

This matter is before the hearing examiner for final consideration on the complaint, answer, testimony, and other evidence and proposed findings of fact and conclusions filed by counsel for the respondents and counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. Respondent Accro Watch Company, 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 580 Fifth Avenue, in the City of New York, State of New York (Stip. of Facts, CX 23, Tr. 5).

2. Respondent Joseph Udell is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondent (Stip. of Facts, CX 23, Tr. 5).

3. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of watches to retailers for resale to the public, under the trade names "Accro," "Gaylord," "Royal Geneva," and "Invicta" (Stip. of Facts, CX 23, Tr. 5).

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act (Stip. of Facts, CX 23, Tr. 5).

5. The cases of certain of the watches offered for sale and sold by respondents 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. Said watchcases are not marked to disclose that the bezels are composed of base metal or metal other than stainless steel (Stip. of Facts,

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CX 23, Tr. 5-6; CX 2, CX 62; CX 8A, CX 12, CX 13, CX 18).

6. The practice of respondents of offering for sale and selling watches, the cases of which incorporate bezels composed of base metal which have been treated or processed to simulate or have the appearance of precious metal or stainless steel, 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 (hearing examiner's Order Granting Motion to Take Official Notice, dated January 4, 1965).

7. The cases of certain of respondents' watches have bezels which have the appearance of being rolled gold plate, gold filled or solid gold. Certain of these watches are marked "5 micron bezel." 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 (Stip. of Facts, CX 23, Tr. 6).

8. Watchcases which incorporate bezels composed of a stock of base metal to which has been electrolytically applied a very thin flashing or coating of precious metal on which there is no disclosure of the true metal composition of the bezels, have a tendency and capacity to lead members of the purchasing public to believe that said bezels are rolled gold plate, gold filled or solid gold (hearing examiner's Order Granting Motion to Take Official Notice, dated January 4, 1965; CX 6T, 6V, 7B, 7D, 7E, 8B, 14, 16, 21; see also F.T.C. Trade Practices; Rules for the watch case industry, Rule 174.2(i), 16 C.F.R. 513, 515).

9. The cases of certain of respondents' watches are imported from Hong Kong and France and this is not disclosed except by marking on the inside of the cases, which cannot be seen after the watch movements have been assembled into the cases. These watchcases house movements which are imported from Switzerland, and when delivered to respondents' customers for resale, the watches are marked "Swiss" on the dials (Stip. of Facts, CX 23, Tr. 6; CX 12-14, 18, 21).

10. In the absence of an adequate disclosure that the aforesaid watchcases are of Hong Kong or French origin, the public believes and understands that they are of domestic or Swiss origin. As to such watchcases, a substantial portion of the purchasing public has a preference for domestic or Swiss products. Respondents' failure clearly and conspicuously to disclose the country or place of origin of said watchcases is, therefore, to the prejudice of the purchasing public (Par. Six of Complaint).

11. Findings 6, 8, and 10 above are based upon the taking of official notice of certain facts by the Commission itself in the complaint in this matter and by the examiner in his Order of January 4, 1965. The respondents have been given full opportunity to present evidence in rebuttal of the facts officially noticed. The respondents have failed to avail themselves of this opportunity to rebut any of the facts officially noticed and found in Findings 6 and 8. As to the facts found in Finding 10 above, of which the Commission itself took official notice in the complaint, the respondents urge that there can be no deception arising from respondents' failure to disclose that cases incorporated into watches marked "Swiss" on their face, actually come from France or Hong Kong (see Respondents' Proposed Findings 13-21). Respondents' contention in this regard must be rejected.

The only evidence in support of this contention is that of individual respondent Joseph Udell and Sheldon Parker, the president of W.M.R. Watch Case Company, one of respondents' principal suppliers of watchcases. The testimony of these two witnesses does not support respondents' contention. The fact that cases manufactured in Hong Kong or France are much cheaper and easier to obtain than Swiss or domestic cases does not establish that the public has no preference for Swiss or domestic cases. Mr. Udell even admitted that if the cases were properly marked as to origin his watches would probably be harder to sell (Tr. 66-67).

Furthermore, these precise questions have been previously litigated and decided adversely to respondents' position in a number of proceedings. *Detra Watch Case Corp.*, F.T.C. Docket 8597, decided September 24, 1964 [64 F.T.C. 848]; *W.M.R. Watch Case Corp.*, F.T.C. Docket 8573, decided March 24, 1964, *aff'd*, 343 F. 2d 302 (D.C. Cir., 1965); *Delaware Watch Company*, F.T.C. Docket 8411, decided August 15, 1963, *aff'd*, 332 F. 2d 745 (2nd Cir., 1964).

In addition, respondents' contention that its watchcases are properly marked in accordance with Customs Rulings and Regulations and therefore are properly marked for all purposes must be rejected. *L. Heller & Son, Inc.*, v. F.T.C., 191 F. 2d 954 (7th Cir., 1951); *Baldwin Bracelet Corp.* v. F.T.C., 325 F. 2d 1012 (D.C. Cir., 1963), *certiorari denied*, 377 U.S. 923 (1964); *Delaware Watch Co.* v. F.T.C. (*supra*).

12. Respondents state on tickets placed in conjunction with their watches, on certificates or cards which accompany their watches, and in certain advertising material, that their watches are "BONDED," and are accompanied by a "Guarantee Bond."

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Respondents thereby represent, directly or by implication, that they have executed a bond, agreement or insurance policy which is supported by a fund set aside by respondents or another party for the purpose of assuring fulfillment of the terms of respondents' guarantee (Stip. of Facts; CX 23; Tr. 6-7; CX 2, 3, 4 5A-F, 22).

13. In truth and in fact, respondents have not executed a bond, agreement or insurance policy which is supported by a fund set aside by respondents or any other party for the purpose of assuring fulfillment of the terms of respondents' guarantee or for any other purpose (Stip. of Facts, CX 23, Tr. 7).

14. In the course and conduct of their business, respondents cause to be placed in conjunction with their watches, guarantee certificates or cards which state that the watch "* * *" is guaranteed against any inherent defects in material and workmanship for one year from date of purchase." This statement of guarantee does not disclose what one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, the manner in which the guarantor will perform under the guarantee, or the full identity of the guarantor (Stip. of Facts, CX 23, Tr. 7).

The aforesaid practice has a tendency and capacity to mislead members of the purchasing public unless the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder, and the full identity of the guarantor are clearly and conspicuously disclosed. *Baldwin Bracelet Corp.*, 61 F.T.C. 1345 (1962), *aff'd*, 325 F. 2d 1012 (D.C. Cir., 1963), *certiorari denied*, 377 U.S. 923 (1964).

15. In the conduct of their business, at all times mentioned in the complaint, 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 (Stip. of Facts, CX 23, Tr. 7).

16. By and through the acts and practices set forth in the complaint, respondents place in the hands of retailers and others the means and instrumentalities whereby retailers and others may mislead the public as to the metal composition and the country or place of origin of their watchcases, and the nature and extent of their guarantee.

CONCLUSIONS

1. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said

statements and representations were and are true and into the purchase of substantial quantities of respondents' watches by reason of said erroneous and mistaken belief.

2. 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.

ORDER TO CEASE AND DESIST

It is ordered, That respondents, Accro Watch Company, Inc., a corporation, and its officers, and Joseph Udell, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches, or any other products, 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:

(a) the cases of which are in whole or in part composed of base metal which has been treated or processed to simulate or have the appearance of precious metal or stainless steel, or

(b) the cases of which are in whole or in part composed of base metal that has been treated with an electrolytically applied flashing or coating of precious metal of less than 1½ of one thousands of an inch over all exposed surfaces after completion of all finishing operations,

without clearly and conspicuously disclosing on such cases or parts the true metal composition in a form consistent with the Trade Practice Conference Rules for the Watch Case Industry (set forth in the Code of Federal Regulations, Title 16, Chapter 1, Part 174).

2. 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 by marking 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, with such conspicuousness as to be likely observed and read by purchasers and prospective purchasers.

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3. Representing, by use of the words "Bonded," "Guarantee Bond," or any other words of similar import or meaning, that a bond, agreement or insurance policy has been executed which is supported by a fund set aside by respondents or any other party for the purpose of assuring fulfillment of the terms of respondents' guarantee or for any other purpose.

4. Representing, directly or by implication, that their watches are guaranteed, unless the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder, and the full identity of the guarantor are clearly and conspicuously disclosed.

5. Misrepresenting, in any manner, or supplying to or placing in the hands of any retailer or other purchaser means or instrumentalities whereby retailers or others may deceive and mislead the purchasing public as to:

- a. The metal composition of watchcases or parts thereof;
- b. The country or place of origin of watchcases or parts thereof; or
- c. The nature or extent of respondents' guarantee.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto, and the Commission having decided to deny the appeal:

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

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

Commissioner Jones concurring in the result.
