

Complaint

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IN THE MATTER OF

CAPITOL MANUFACTURING CORPORATION ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8748. Complaint, Nov. 21, 1967*—Decision, May 9, 1968*

Order requiring a Providence, R.I., distributor of watches to cease preticketing its watches with fictitiously high retail prices, simulating nationally known brand names, falsely guaranteeing, and concealing indicia regarding composition or quality of its products.

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 Capitol Manufacturing Corporation, a corporation, and Louis Rafanelo, 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 Capitol Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 672½ Broadway, in the city of Providence, State of Rhode Island.

Respondent Louis Rafanelo is an officer 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 offering for sale, sale and distribution of watches, appliances, novelties and other articles of merchandise 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

*Reported as amended by Hearing Examiner's order of Jan. 25, 1968, by changing the name of the respondent to "Capitol Manufacturing Corporation." The name of respondent was incorrectly stated as "Capital Manufacturing Corporation."

of Rhode Island 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. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have engaged in the practice of attaching, or causing to be attached, price tickets to their said watches upon which certain amounts are printed.

Respondents thereby represent, directly or by implication, that said amounts are a good faith estimate of the actual retail price, which does not appreciably exceed the highest price at which substantial sales of said watches are made in respondents' trade area.

PAR. 5. In truth and in fact, said prices appearing on the respondents' price tags are not their good faith estimate of the actual retail prices at which substantial sales of respondents' watches are and have been made in their trade area, but appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

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

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have used names which simulate the letters, sound and appearance of names of nationally known and advertised watches to describe the inexpensive watches sold and distributed by them in commerce.

Typical and illustrative of the aforesaid names are the following:

Hormelton
Grumen

PAR. 7. By and through the use of the above-quoted names and others of similar import not specifically set out herein, the respondents represented that their said watches were "Hamilton" and "Gruen" watches, manufactured by the Hamilton Watch Company, Lancaster, Pennsylvania and the Gruen Watch Company, 20 West 47th Street, New York, New York, respectively.

PAR. 8. In truth and in fact, respondents are not selling and distributing either "Hamilton" or "Gruen" watches, but an inexpensive pin-lever type of watch.

Therefore, the statements and representations as to the names of the watches as set forth in Paragraphs Six and Seven hereof were and are false, misleading and deceptive.

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PAR. 9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their aforesaid watches, the respondents have made numerous statements on guarantee certificates enclosed with their watches.

Typical and illustrative of the aforesaid statements but not all inclusive thereof, are the following:

Electra Two Year Service Guarantee Certificate
Two Years
Service Guarantee

We guarantee this watch for 2 years from date of purchase against defects in material and workmanship. * * *

PAR. 10. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents represent, and have represented, directly or by implication:

a. That the guarantor is an organization identified as "Electra."

b. That all of the obligations and requirements under the terms of the guarantee are fully, satisfactorily and promptly performed by the guarantor.

c. That the said watches will operate properly for at least the two year period represented in the guarantee.

PAR. 11. In truth and in fact:

a. The guarantor is the respondent, so that respondent has thereby failed to identify the guarantor.

b. All of the obligations and requirements under the terms of the guarantee are not fully, satisfactorily and promptly performed by the guarantor.

c. Few, if any of said watches will operate properly for at least the two year period represented in the guarantee.

Therefore, the statements and representations as set forth in Paragraphs Nine and Ten hereof were and are false, misleading and deceptive.

PAR. 12. Certain of the watches offered for sale and sold by respondents are in cases which consist of two parts, that is, a back and bezel. The back part has the appearance of stainless steel. The bezel is composed of base metal which has been treated or processed to simulate or have the appearance of precious metal. Such bezels are finished in a color simulating gold or gold alloy. Said watchcases are marked with the term "Base Metal" on the back which indicates that the entire watch is base metal. However, respondents have caused to be affixed to the backs of their watches gummed stickers which conceal the fact that the watchcases are composed of base metal.

PAR. 13. The practice of respondents in offering for sale and selling watches the cases of which are composed of base metal treated or processed to simulate or have the appearance of precious metal or stainless steel as aforesaid and concealing the fact that such watchcases are made of base metal by the use of gummed labels which cover the markings on the backs is misleading and deceptive and has a substantial tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said bezels are composed of precious metal or stainless steel.

Therefore, the acts and practices set forth in Paragraph Twelve hereof, were and are false, misleading and deceptive.

PAR. 14. In addition to the aforesaid fictitious price tags, guarantees, representations of two year durability, metal content and brand names, respondents on the tags, labels and markings attached to said watches have imprinted phrases such as "Lifetime Mainspring," "Electronically Timed," "Swiss Precision Craftsmanship" and other similar expressions, and various numerals which, under the circumstances, could be taken for statements of the number of jewels in the watch. Respondents have thereby combined various representations so as to create, and have created, the impression that said watches are expensive, delicately designed, high quality, brand name watches.

PAR. 15. In truth and in fact, said watches are not expensive, delicately designed, high quality, brand name watches but, on the contrary, are cheap, nondescript, pin lever watches.

Therefore, the acts and practices set forth in Paragraph Fourteen hereof, were and are false, misleading and deceptive.

PAR. 16. By and through the use of the aforesaid acts and practices respondents place in the hands of jobbers, retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 17. In the conduct of their business, at all time mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of watches of the same general kind and nature as that sold by respondents.

PAR. 18. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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PAR. 19. 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. Harry E. Middleton, Jr., supporting the complaint.

Mr. Saul Friedman, and *Mr. Fergus J. McOsker*, Providence, R.I., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JANUARY 31, 1968

This proceeding was commenced by the issuance of a complaint on November 21, 1967, charging the corporate respondent¹ and Louis Rafanelo, individually and as an officer of said corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by making certain false, misleading and deceptive claims in connection with the sale of watches and other merchandise sold by them.

The initial hearing scheduled in the complaint for January 8, 1968, was canceled by order of the undersigned on motion of counsel supporting the complaint due to the inability to obtain service of the complaint on respondents by registered mail. Personal service of the complaint was thereafter made upon said respondents on December 22, 1967.

Respondents have failed to file answer to the complaint within thirty (30) days, as set forth in the Notice served with said complaint and as provided by Section 3.12(a) of the Commission's Rules of Practice for Adjudicative Proceedings, and they are now in default under Section 3.12(c) of said rules.

By reason of such default, respondents have waived their right to appear and contest the allegations of the complaint and the hearing examiner under Section 3.12(c) of the rules is authorized, without further notice to the respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

¹ The complaint as originally issued incorrectly spelled the name of the corporate respondent as "Capital Manufacturing Corporation." An Order issued by the Hearing Examiner of January 25, 1968, amended the complaint to substitute the correct name of the corporate respondent "Capitol Manufacturing Corporation" wherever the corporate name appeared in the complaint.

FINDINGS

1. Respondent Capitol Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 672½ Broadway, in the city of Providence, State of Rhode Island.

Respondent Louis Rafanelo is an officer 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.

2. Respondents are now, and for some time last past have been, engaged in offering for sale, sale and distribution of watches, appliances, novelties and other articles of merchandise to retailers for resale to the public.

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 Rhode Island 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.

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have engaged in the practice of attaching, or causing to be attached, price tickets to their said watches upon which certain amounts are printed.

Respondents thereby represent, directly or by implication, that said amounts are a good faith estimate of the actual retail price, which does not appreciably exceed the highest price at which substantial sales of said watches are made in respondents' trade area.

5. In truth and in fact, said prices appearing on the respondents' price tags are not their good faith estimate of the actual retail prices at which substantial sales of respondents' watches are and have been made in their trade area, but appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

Therefore, the statements and representations as set forth in Finding 4 hereof were, and are, false, misleading and deceptive.

6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have used names which simulate the letters, sound and appearance of names of nationally known and advertised watches to describe the inexpensive watches sold and distributed by them in commerce.

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Typical and illustrative of the aforesaid names are the following:

Hormelton
Grumen

7. By and through the use of the above-quoted names and others of similar import not specifically set out herein, the respondents represented that their said watches were "Hamilton" and "Gruen" watches, manufactured by the Hamilton Watch Company, Lancaster, Pennsylvania, and the Gruen Watch Company, 20 West 47th Street, New York, New York, respectively.

8. In truth and in fact, respondents are not selling and distributing either "Hamilton" or "Gruen" watches, but an inexpensive pin-lever type of watch.

Therefore, the statements and representations as to the names of the watches as set forth in Findings 6 and 7 hereof were and are false, misleading and deceptive.

9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their aforesaid watches, the respondents have made numerous statements on guarantee certificates enclosed with their watches.

Typical and illustrative of the aforesaid statements but not all inclusive thereof, are the following:

Electra Two Year Service Guarantee Certificate

Two Years

Service Guarantee

We guarantee this watch for 2 years from date of purchase against defects in material and workmanship. * * *

10. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents represent, and have represented, directly or by implication:

- a. That the guarantor is an organization identified as "Electra."
- b. That all of the obligations and requirements under the terms of the guarantee are fully, satisfactorily and promptly performed by the guarantor.
- c. That the said watches will operate properly for at least the two year period represented in the guarantee.

11. In truth and in fact:

- a. The guarantor is the respondent, so that respondent has thereby failed to identify the guarantor.
- b. All of the obligations and requirements under the terms of the guarantee are not fully, satisfactorily and promptly performed by the guarantor.

c. Few, if any, of said watches will operate properly for at least the two year period represented in the guarantee.

Therefore, the statements and representations as set forth in Findings 9 and 10 hereof were and are false, misleading and deceptive.

12. Certain of the watches offered for sale and sold by respondents are in cases which consist of two parts, that is, a back and bezel. The back part has the appearance of stainless steel. The bezel is composed of base metal which has been treated or processed to simulate or have the appearance of precious metal. Such bezels are finished in a color simulating gold or gold alloy. Said watchcases are marked with the term "Base Metal" on the back which indicates that the entire watch is base metal. However, respondents have caused to be affixed to the backs of their watches gummed stickers which conceal the fact that the watchcases are composed of base metal.

13. The practice of respondents in offering for sale and selling watches the cases of which are composed of base metal treated or processed to simulate or have the appearance of precious metal or stainless steel as aforesaid and concealing the fact that such watchcases are made of base metal, by the use of gummed labels which cover the markings on the backs, is misleading and deceptive and has a substantial tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said bezels are composed of precious metal or stainless steel.

Therefore, the acts and practices set forth in Finding 12 hereof, were and are false, misleading and deceptive.

14. In addition to the aforesaid fictitious price tags, guarantees, representations of two year durability, metal content and brand names, respondents on the tags, labels and markings attached to said watches have imprinted phrases such as "Lifetime Mainspring," "Electronically Timed," "Swiss Precision Craftsmanship" and other similar expressions, and various numerals which, under the circumstances, could be taken for statements of the number of jewels in the watch. Respondents have thereby combined various representations so as to create, and have created, the impression that said watches are expensive, delicately designed, high quality, brand name watches.

15. In truth and in fact, said watches are not expensive, delicately designed, high quality, brand name watches but, on the contrary, are cheap, nondescript, pin-lever watches.

Therefore, the acts and practices set forth in Finding 14, hereof, were and are false, misleading and deceptive.

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16. By and through the use of the aforesaid acts and practices respondents place in the hands of jobbers, retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove found.

17. 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 that sold by respondents.

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

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, 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.

2. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

ORDER

It is ordered. That respondents Capitol Manufacturing Corporation, a corporation, and its officers, and Louis Rafanelo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or distributing any list, preticketed or suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably ex-

ceeds the highest price at which substantial sales are made in respondents' trade area.

2. Misrepresenting, in any manner, the prices at which respondents' merchandise is sold at retail.

3. Using the names "Hormelton" or "Grumen" or any other names which simulate the letters, sound or appearance of the names of nationally known and advertised watches as descriptive of respondents' watches; or misrepresenting in any manner the make, model, brand, source, origin or manufacture of respondents' products.

4. Representing, directly or by implication, that any product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth in immediate connection therewith.

5. Representing, directly or by implication, that respondents' products are guaranteed unless respondents fully, satisfactorily and promptly perform all of their obligations and requirements under the terms of the guarantee.

6. Representing, directly or by implication, that respondents' watches will operate properly for two years or for any other period of time: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said watches will operate properly in normal use for the period of time represented.

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

8. Obliterating, concealing, or obscuring any markings or legends regarding the quality, composition, source or origin of respondents' products.

9. Representing, directly or by implication, that respondents' watches are expensive, high quality, delicately designed or brand name watches: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said watches are of the value, quality, design or source represented.

10. Misrepresenting, in any manner, the grade, quality, class or type of any of respondents' products.

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11. Placing in the hands of agents, salesmen, distributors or retail dealers, or any other person or persons, means and instrumentalities by and through which they may deceive or mislead the purchasing public as hereinabove prohibited.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967) the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 9th day of May, 1968, become the decision of the Commission.

It is further ordered, That Capitol Manufacturing Corporation, a corporation, and Louis Rafanelo, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing signed by