

BENRUS WATCH COMPANY, INC., ET AL.

Docket 7352. Order and Opinion, Feb. 4, 1969

Order denying respondents' petition requesting that Paragraphs 4 and 5 of final order be set aside.

OPINION OF THE COMMISSION

By petition filed December 3, 1968, corporate respondents and three individual respondents request that Paragraphs 4 and 5 of the final order to cease and desist which issued February 28, 1964, be vacated and set aside. The Director, Bureau of Deceptive Practices, has filed an answer in opposition to the petition.

Paragraphs 4 and 5 of the final order require respondents to cease and desist from:

4. 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, without clearly and conspicuously disclosing on such cases the true metal composition of such treated cases or parts.

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

The bezels¹ of two of respondents' watch cases were introduced in evidence in the trial of this case. As a result of tests, one bezel was found to have a gold covering of .00083 of an inch of 18.46 karat gold, while the gold covering of the other was found to be .0007 of an inch of 18.32 karat gold. The gold covering on both exhibits had been applied by electroplating. In our decision we stated that:

The record here shows that respondents' bezels, even though containing some gold, were in fact composed of base metal with a thin and unsubstantial coating of gold. The test results disclose that the gold coatings were extremely thin. We note that under the Commission's Trade Practice Rules for the Watch Case Industry a coating of less than $1\frac{1}{2}$ 1000ths of an inch thickness of precious metal is deemed either base metal or base metal flashed or coated with a very thin and unsubstantial coating. 16 C.F.R. 174.2(9). A bezel with less than $1\frac{1}{2}$ 1000ths of an inch thickness of gold marked in a manner set forth in such rule would not be considered misleading. Watches improperly marked as to gold content may be found to be deceptive and in violation of the Federal Trade Commission Act.

¹ A bezel is the grooved rim in which a watch crystal is set.

The Trade Practice Rules referred to in our decision were superseded by Guides for the Watch Industry, adopted by the Commission on May 14, 1968. Respondents contend that these Guides represent a complete turnabout of the Commission's previous views with respect to gold electroplated watch cases. Their position is that the Guides implicitly recognize that an electrolytically applied coating of gold of a thickness of $\frac{3}{4}$ 1000ths (.00075) of an inch is neither thin nor unsubstantial. Thus, they argue that their watch cases which were introduced in evidence in this case would have complied with the present thickness requirements of the Guides.

It is true that the thickness requirement for designating a watch case as "gold electroplated" was reduced from $1\frac{1}{2}$ 1000ths of an inch in the Trade Practice Rules to $\frac{3}{4}$ 1000ths of an inch in the Guides. However, thickness of the plating is but one of the criteria in the Guides for the use of the term "gold electroplated." Unlike the Trade Practice Rules, the Guides require that the plating must successfully withstand certain prescribed tests for adhesion, hardness, and porosity. Watch cases with platings that do not meet these tests, even though the plating be $\frac{3}{4}$ 1000ths of an inch thick, are to be marked as "Base Metal." Respondents have made no showing, nor do they even contend, that the bezels of their watch cases which were introduced in evidence would have met the test requirements of the Guides.

More importantly, respondents have chosen to ignore the argument advanced in their petition, filed July 1, 1964, requesting modification of Paragraph 5 of the final order. Specifically, respondents requested that we modify Paragraph 5 to permit them to designate as "gold electroplate" certain watch cases which they were then manufacturing and which had a plating of less than $1\frac{1}{2}$ 1000ths of an inch thickness.² Respondents argued that there had been substantial improvements in the electroplating art since the promulgation of the Trade Practice Rules, and that their then current watch cases were plated by a process that was markedly improved over the process employed in plating the bezels of the watch cases introduced in evidence. Respondents conceded that, given the limitations of the processes then in use, the standard adopted in the Trade Practice Rules may well have been reasonable.

Under these circumstances, respondents' argument that Para-

² Respondents requested permission to use the designation "20 Micron Gold Electroplate."