

Consent order requiring a Dallas, Texas, retail jeweler operating through 439 retail outlets and 110 additional outlets under other trade names to cease using deceptive pricing practices, savings claims, and false guarantees.

¹ Final order to cease and desist issued February 25, 1971, 78 F.T.C. 446.

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 Zale Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 512 South Akard Street, in the city of Dallas, State of Texas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of watches, jewelry, diamonds, and other merchandise to the public. Respondent conducts said business through retail jewelry outlets in department and discount stores operated under agreements with the store operators and through approximately 439 retail jewelry outlets operating under the name "Zales" and approximately 110 additional retail jewelry outlets operating under various other trade names. Many of these retail jewelry outlets are operated through subsidiary corporations wholly owned or controlled by respondent.

PAR. 3. In the course and conduct of its business as aforesaid, from its headquarters in Dallas, Texas, respondent ships, and causes to be shipped, watches, jewelry, diamonds and other merchandise to said retail jewelry outlets located in States other than Texas for sale to the purchasing public. Similarly, advertising and promotional material is prepared, or caused to be prepared, by respondent in Dallas, Texas, and transmitted to and used by said retail jewelry outlets and published in newspapers having an interstate circulation. Respondent further engages in commercial intercourse, in commerce, consisting of the transmission and receipt of letters, invoices, reports, contracts and other documents of a commercial nature between headquarters and its retail jewelry outlets in the various States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business and for the purpose of inducing others to purchase its watches, jewelry, dia-

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monds, and other merchandise, respondent has made, and is now making, directly or by implication, numerous statements and representations on tickets, tags and labels and in advertisements in newspapers and on radio and television and by the use of other promotional material, with respect to the price, savings, and guarantee of said merchandise.

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

WATCHES

... BENRUS

REG. 82.50 NOW 41.50

... ALL REDUCED UP TO 50%

BULOVA WATCHES

COMPARE SALES PRICES ...

YOUR MONEY BACK IN 30 DAYS IF

YOU FIND A BETTER VALUE

BULOVA

WATCHES

-AT-

LOWEST

DISCOUNTS

COMPARE ZALE'S PRICES ...
YOUR MONEY BACK IN 60 DAYS
IF YOU FIND A BETTER VALUE!

Also Hamilton and Elgin
Watches

SAVE NOW AT LOW DISCOUNT PRICES! ...

Factory list		Our new low price
\$24.75.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$19.05
\$35.75.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$21.61
\$45.00.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$35.15
\$59.50.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$32.50
\$75.00.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$40.81
\$115.....	Zale's has never sold this watch at list price. Now Zale's price is even lower than usual.	\$58.64

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ZALE'S
JEWELERS

Lowest Prices on
BULOVA WATCHES
40% OFF AND MORE

Was	Now
\$24.75	\$19.05
\$35.75	\$21.61
\$45.00	\$25.15
\$59.50	\$32.50
\$75.00	\$40.81
\$115.00	\$58.64

Prices Plus Tax

Zale's Prices Are Always Lower Than
Manufacturers' List—Now They're Even Lower!

HEAD START ON SAVINGS!

ZALES

CLEARANCE '70!

Reg. \$375 (Illustration of Ring) NOW \$281.25	Reg. \$725 (Illustration of Ring) NOW \$543.75	Reg. \$395 (Illustration of Ring) NOW \$286.25
Reg. \$150 (Illustration of Ring) NOW \$112.50		Reg. \$225 (Illustration of Ring) NOW \$168.75

SAVE
25%

off regular prices

Reg. \$295 (Illustration of Ring) NOW \$236.00	Reg. \$150 (Illustration of Ring) NOW \$120.00	Reg. \$395 (Illustration of Ring) NOW \$316.00
Reg. \$275 (Illustration of Ring) NOW \$220.00		Reg. \$100 (Illustration of Ring) NOW \$80.00

SAVE
20%

off regular prices

CHOOSE FROM OUR LARGE SELECTIONS!

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HEAD START ON SAVINGS!

ZALES

CLEARANCE '70!

GENUINE STONE DIAL WATCHES	21-JEWELS 14K GOLD CASE
Reg. \$19.88	Reg. \$25.88
(Illustration of Watches)	(Illustration of Watch)
NOW \$15.88 ea.	NOW \$19.88
21-JEWELS DAY AND DATE	21-JEWELS DRESS WATCH
Reg. \$22.88	Reg. \$15.88
(Illustration of Watch)	(Illustration of Watch)
NOW \$17.88	NOW \$11.88

JANUARY WATCH SALE!

FROM 20% TO 33%

OFF REGULAR PRICE

ON FAMOUS

BRAND WATCHES

CHOOSE FROM OUR LARGE SELECTIONS!

ZALES

JEWELERS

OUR GREATEST WATCH BUY EVER!

SAVE UP TO 40%

17-JEWELS

Water-resistant

Mfg. List \$45.00

SALE \$34.88

17-Jewels

Automatic

Mfg. List \$75.00

SALE \$49.88

25-Jewels

Automatic

Mfg. List \$89.95

SALE \$64.88

MEN: ZALES CAN SAVE YOU UP TO 40% ON AMERICA'S MOST FAMOUS BRAND WATCHES. Because this is a special purchase, we can't advertise the brand name. But come to Zales and see for yourself—These are from America's most famous watchmaker.

ZALES BANG-UP

JULY CLEARANCE!

Great Values! Shop Today!

SAVE 20%

off our regular low prices

FANTASTIC WATCH VALUES:

Regular Price \$24.95	Sale Price NOW \$19.96
Regular Price 29.95	Sale Price NOW 23.96
Regular Price 39.95	Sale Price NOW 31.96
Regular Price 49.95	Sale Price NOW 39.96
Regular Price 59.95	Sale Price NOW 47.96

PRE-CHRISTMAS
SALE

FAMOUS HAMILTON WATCHES

BUY NOW AND SAVE

It's the early bird savings scoop you just can't pass up if you appreciate quality at a price. Not ordinary watches—but fine, dependable HAMILTON watches—reduced—just before Christmas when you appreciate savings most!

17-Jewels	Not \$49.95	At Zales \$34.88
17-Jewels	Not \$49.95	At Zales \$34.88
17-Jewels	Not \$59.95	At Zales \$39.98
Dress Watch	Not \$59.95	At Zales \$39.88
17-Jewels	Not \$69.95	At Zales \$44.88.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondent has represented, and is now representing, directly or by implication:

1. That the higher stated prices set out in said advertisements in connection with the term "was" and "Regular" were the prices at which the advertised merchandise was sold or offered for sale in good faith by respondent or its subsidiary corporations in the trade area or areas where the representations were made in the recent, regular course of its business, and that purchasers saved the difference between respondent's advertised selling prices and the corresponding higher prices.

2. That the higher stated prices set out in said advertisements in connection with the terms "Factory List," "Mfg. List" and "NOT ... AT ZALES ..." were not appreciably in excess of the highest price at which substantial sales of such merchandise had been made in the recent, regular course of business in the trade area or areas where such representations appeared, and that purchasers saved the difference between respondent's advertised selling prices and the corresponding higher prices.

3. Through the use of the terms "Save 20%" and "Save 25%" and the terms, "From 20% to 33% off regular price," set out in said advertisements, that all of respondent's watches and rings in the stores

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covered by said advertisements were reduced in price by the stated savings from respondent's regular prices.

PAR. 6. In truth and in fact:

1. The higher prices set out in said advertisements in connection with the terms "was" and "Regular" were not the prices at which the advertised merchandise was sold or offered for sale in good faith by respondent or its subsidiary corporations in the trade area or areas where the representations were made for a reasonably substantial period of time in the recent, regular course of its business, and purchasers did not save the difference between respondent's advertised selling prices and the corresponding higher prices.

2. The higher prices set out in said advertisements in connection with the terms "Factory List," "Mfg. List" and "NOT . . . AT ZALES . . ." were appreciably in excess of the highest price at which substantial sales of such merchandise had been made in the recent, regular course of business in the trade area or areas where such representations appeared, and purchasers did not save the difference between respondent's advertised selling prices and the corresponding higher prices. Further, with respect to some of these watches, the original watch movement placed in the watchcase by the manufacturer has been subsequently removed therefrom by the respondent and placed in a case of another manufacturer. As a result of such acts and practices, these watches did not have a represented trade area price.

3. All of respondent's watches and rings in the stores covered by said advertisements were not reduced in price and the stated savings of "20%" and "25%" and "20% to 33%" from respondent's regular prices. Respondent's retail stores are instructed that the entire stock of diamond rings are not to be sold at the stated savings. Some diamond rings are not to be reduced at all. Further, respondent's retail stores are instructed that only a portion of the entire stock of watches are to be placed on sale and that certain designated manufacturers' watches are not to be sold at reduced prices.

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

PAR. 7. Respondent, for the purpose of inducing the purchase of its watches, used fictitious manufacturers' suggested retail prices by attaching tickets or tags on which said suggested prices are printed to watch containers, thereby representing that the manufacturer of said watches had attached said tickets or tags and had specified or fixed the price shown thereon as its suggested retail price. *et al.*

In truth and in fact, the manufacturer of said watches had not attached such tickets or tags to said watches, and had not specified or fixed the price shown thereon as its suggested retail price.

Therefore, such acts and practices were and are false, misleading and deceptive.

PAR. 8. Respondent advertises and sells some watches at retail without disclosing that the original watch movement placed in the watch-case by the manufacturer has been subsequently removed therefrom by the respondent and placed in a case of another manufacturer.

To the purchasing public said watches appear to be in the original condition of manufacture, and respondent's failure to disclose that the watch movement has been removed from its original case and placed in a case of another manufacturer misleads purchasers into believing that said watches are the original, unaltered product of the manufacturer with whom they are identified.

Furthermore, as a result of such acts and practices by the respondent, many watch manufacturers will not honor their guarantees covering the original watches. Purchasers who buy such watches are misled and deceived into believing that the manufacturer will honor their guarantees on said watches.

Therefore, such acts and practices of the respondent were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals in the sale of watches, jewelry, diamonds, and other merchandise of the same general kind and nature as that sold by respondent.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 512 South Akard Street, Dallas, Texas.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Zale Corporation, a corporation, and its officers, and its subsidiaries and their officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of watches, jewelry, diamonds or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, by and through its retail jewelry outlets operated

under the trade name "Zales" or any other trade name, do forthwith cease and desist from:

1. Using the terms "was" or "Regular," or any other word, words or representations of similar import or meaning, to refer to any price amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondent in the trade area or areas where the representation is made for a reasonably substantial period of time in the recent, regular course of its business; or otherwise misrepresenting the former price at which such merchandise has been sold or offered for sale by respondent.
2. Using the terms "Factory List," "Mfg. List" or "NOT . . . AT ZALES . . .," or any other word, words or representations of similar import or meaning, to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent, regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.
3. Using the terms "Save 20%," "Save 25%," or "From 20% to 33% off," or any other word or words stating or implying reductions in price unless such reductions apply to each article of the particular class of merchandise represented to be offered for sale at the advertised reductions.
4. (a) Representing, in any manner, that purchasers or prospective purchasers of said merchandise will be afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of its business.
(b) Representing, in any manner, that purchasers or prospective purchasers of said merchandise will be afforded savings amounting to the difference between respondent's stated price and a compared price for said merchandise in respondent's trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.
(c) Representing, in any manner, that purchasers or prospective purchasers of said merchandise will be afforded savings amounting to the difference between respondent's stated price

and a compared value price for comparable merchandise in respondent's trade area, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondent has in good faith conducted a market survey or obtained a similar representative sample of prices in its trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed in immediate conjunction with any such representation that the comparison is with merchandise of like grade and quality.

5. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondent's merchandise at retail.

6. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 1-5 of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 1-5 of this order can be determined.

7. Representing in advertising or promotional material or using tickets, tags, or labels stating that any price amount is or has been established or suggested as the retail selling price by the manufacturer or distributor for an article of merchandise unless the stated price has been in fact so established for the identical article to which respondent represents it to be applicable.

8. Representing, directly or by implication, that watches, the movements of which have been removed from their original case and placed in a different case, are guaranteed unless the identity of the guarantor, the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with any such representation.

Provided, however, That with respect to respondent's retail jewelry outlets in department and discount stores operated under agreements with the store operators, this order shall not take effect for a period of one year from the date upon which the Commission issues its decision containing this order to cease and desist.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions, subsidiaries, or affiliated corporations and their respective divisions.

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It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein 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 this order.

It is further ordered, That the respondent shall file with the Commission a second report in writing setting forth in detail the manner and form in which it has complied with this order one year from the date upon which the Commission issues its decision containing this order to cease and desist.
