

Complaint

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It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, each file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

BATTLE CREEK DEVELOPMENT CO., ET AL.

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

Docket C-2267. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring a St. Paul, Minnesota, company of operating a number of retail jewelry stores to cease, among other things, using the words "Sale" or "... Surplus Stock Sale" unless the price of such merchandise being offered for sale constitutes a significant reduction in price; misrepresenting the usual or regular selling price of respondent's merchandise; misrepresenting the amount of savings available to purchasers; representing respondent's credit terms are lenient and that credit is available regardless of ability to pay or legal age status; representing that products contain or are made or composed, in whole or in part, of a gold quantity, weight, or fineness not actually used or contained therein; and representing that any article of merchandise is guaranteed, without disclosing the nature, conditions and extent of said guarantee.

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 Battle Creek Development Co., a corporation, and Cortland J. Silver and James B. Seaton, individually and as officers 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. Battle Creek Development Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 748 South Mississippi Boulevard, St. Paul, Minnesota.

Respondents Cortland J. Silver and James B. Seaton are officers of said corporation. Respondent Cortland J. Silver now and for some time last past controls and respondent James B. Seaton for some time

last past has formulated and directed the policies, acts and practices of the corporate respondent, including the acts and practices set forth herein. They have a business address the same as that of the corporate respondent.

PAR. 2. Respondent Battle Creek Development Co. is now and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of a variety of merchandise, including watches, jewelry, diamonds, radios, clocks, tape recorders, dinnerware, tableware, and other merchandise to the public. Said respondent conducts said business through retail jewelry stores located in St. Paul, Minnesota, Fort Collins, Colorado and St. Joseph, Missouri and previously conducted said business through retail jewelry stores located in Rochester, Minnesota, Green Bay, Wisconsin, and Waukegan and Jacksonville, Illinois.

PAR. 3. In the course and conduct of its business as aforesaid, respondents ship, and cause to be shipped, watches, jewelry, diamonds and other merchandise to said retail jewelry outlets for sale to the purchasing public. Similarly, advertising and promotional material is prepared, or caused to be prepared, by respondents in St. Paul, Minnesota, and transmitted to and used by said retail jewelry outlets and published in newspapers having an interstate circulation. Respondents further engage in business, in commerce, consisting of the transmission and receipt of letters, invoices, reports, contracts and other documents of a commercial nature between headquarters and their 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 their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation. Typical and illustrative of the foregoing but not all inclusive thereof, are the following:

All Merchandise Sold With a Money Back Guarantee
Unconditional 30 Day Money-Back Guarantee
Diamonds Guaranteed against Loss of Value or Loss from Settings for Life
Lifetime Guarantee on all Diamond Rings

PAR. 5. By and through the use of the above-quoted statements and representations, and other of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that their product guarantee is unconditional.

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PAR. 6. In truth and in fact, respondents' product guarantees are not unconditional, but are subject to limitations and conditions which are not revealed in the advertising of said guarantees.

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

PAR 7. In the course and conduct of their aforesaid business and for the purpose of inducing others to purchase its watches, jewelry, diamonds, and other merchandise, respondents have made, and are 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:

Cortland's 9 Store Surplus Stock Sale—Price Busters

Watches

Men's:	Now
Elgin—Y.G., Auto./Day/Date (Reg. 89.25)-----	48.88
Elgin—SS, Waterproof (Reg. 42.50)-----	26.88
Elgin—W. G., Automatic (Reg. 79.95)-----	39.88
Hamilton—Y.G., Automatic (Reg. 119.95)-----	69.88
Hamilton—Y.G., Calendar (Reg. 79.95)-----	39.88
Hamilton—W.G., Automatic, Calendar (Reg. 99.50)-----	59.88
Ladies':	
Hamilton—Y.G., 6 Diamonds (Reg. 175.00)-----	91.88
Hamilton—W.G., Dress (Reg. 100.00)-----	49.88
Hamilton—Y.G., Dress (Reg. 79.95)-----	39.88
Benrus—Y.G., Patriot (Reg. 59.95)-----	23.95
Elgin—Y.G., 6 Diamonds, 19 Jewel (Reg. 149.50)-----	58.88
Elgin—Y.G., Dress (Reg. 67.50)-----	31.88
Elgin—Y.G., Sport Dress (Reg. 29.88)-----	17.88

CASH SPECIAL

	Now
17 Jewel SWISS MOVEMENT WATCHES (Reg. 39.95)-----	12.88
17 Jewel SWISS MOVEMENT WATCHES (Reg. 49.95)-----	22.88
* * * * *	

Pierced Earrings

Reg. \$9.00-----	Now \$6.00
Reg. \$6.00-----	Now 4.00
Reg. \$3.00-----	Now 2.00

Entire Stock 1/2 off

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	<i>Now</i>
Ladies Pearl Rings Reg. 29.95-----	Now \$11.88
* * * * *	
Birthingstone Rings. Many to choose from. Value to \$29.95. Your choice only--	\$8.99
* * * * *	
Man's Diamond—Onyx Initial Ring. Yellow Gold. Reg. \$47.50-----	Now \$22.88
* * * * *	
Ironstone Dinnerware, Complete Service for 8. Regular \$39.95-----	Now \$21.88
2 patterns to choose from	
* * * * *	
Grab Bags-----	\$1.00
Included are Diamond Rings, Watches, Jewelry for Ladies or Men	
	Values to \$125.00
* * * * *	
China and Crystal. Complete Service for 8. Included are:	
China 53 pieces, crystal 24 pieces. Regular \$69.95-----	Now \$48.88
* * * * *	
RADIO	
AM/FM/SW, Battery or Electric. Reg. \$49.95-----	Now \$24.88
* * * * *	
All Cortland Watches. 5-Year Guarantee. Buy now-----	25% Off
* * * * *	
Buys of a Lifetime. Loose Diamonds:	
	<i>Now</i>
1/8 ct (Reg. \$200.00)-----	\$120
1/2 ct (Reg. \$345.00)-----	239
3/4 ct (Reg. \$685.00)-----	459
* * * * *	
Birthingstone Rings. Entire Stock. Ladies and Men's-----	25% Off
* * * * *	
Sheffield Reproduction Silver Sale-----	Save up to 50%
* * * * *	
Famous Brand Cigarette Lighters-----	Save 30%
* * * * *	
Save on Silver Plated Holloware-----	32% Discount
* * * * *	
C. J. Silver Jewelers Blasts Prices On Diamonds—Jewelry—Gifts	
Right Before Christmas-----	Save 20% to 33%
Everything Included—Nothing Held Back	
* * * * *	
All the Credit You Need	
* * * * *	
Easy Credit Terms	
* * * * *	
Instant Credit—Even if you are under 21	
* * * * *	
Your Credit is Good— * * * Even if you are under 21	
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PAR. 8. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import or meaning, were the prices at which the advertised merchandise was offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business. Purchasers of such merchandise would save an amount equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

2. During the period of the advertised "Sale" or "Surplus Stock Sale," or words of similar import and meaning, the advertised price of any merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

3. The terms "Save 20%," "Save 25%," "Save 20% to 33%," "1/3 off" and other savings claims of similar import expressed in percentages or fractions set out in said advertisements offer a reduction in price by the stated savings from respondents' watches, rings and diamond—jewelry—gifts.

4. The terms "All the Credit You Need," "Easy Credit Terms," "Instant Credit—Even if you are under 21," "Your Credit is good * * * Even if you are under 21" and other words of similar import used in said advertisements offering to extend easy credit to all customers responding to the advertisements without determining the customers' financial ability to pay, or their credit rating or legal age status.

5. Watches, rings and other merchandise offered for sale in said advertisements are made in whole or in part of gold or of an alloy of gold.

6. Pearl rings offered for sale in said advertisements are made with natural or genuine pearls.

7. Birthstone rings offered for sale in said advertisements are made with natural or genuine precious or semi-precious stones.

8. Watches offered for sale in said advertisements are waterproof in every respect, without qualification or limitation.

PAR. 9. In truth and in fact:

1. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import and meaning, were not the prices that advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent,

regular course of their business, and purchasers thereof would not save amounts equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

2. During the period of the advertised "Sale" or "Surplus Stock Sale," or words of similar import and meaning, the advertised price of any merchandise did not represent a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

3. All of respondents' watches, rings and diamonds—jewelry—gifts in the stores covered by said advertisements were not reduced by the stated savings of "20%" and "25%" and "20% to 33%" and "1/3 off" from respondents' regular prices.

4. Contrary to respondents' representations not all customers of all ages responding to said advertisements are able to purchase advertised merchandise on credit.

5. Watches, rings and other merchandise offered for sale in said advertisements and described as containing yellow gold or abbreviation YG or WG are not composed throughout of fine (24 karat) gold. Karat fineness of alloy is not adequately and conspicuously disclosed.

6. The pearls used in rings offered for sale in said advertisements are not natural or genuine pearls but are either cultured pearls or imitation pearls.

7. The birthstones used in rings offered for sale in said advertisements are not all natural or genuine stones but are imitation or synthetic precious or semi-precious stones.

8. Watches offered for sale in said advertisements are not waterproof in every respect without qualification or limitation.

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

PAR. 10. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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' merchandise by reason of said erroneous and mistaken belief.

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PAR. 12. The acts and practices of the respondents as set forth above were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constitute, 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally 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 Section 2.34(b) of its rules, and having determined on the basis of such comments that Paragraph 11 of the provisionally accepted consent order should be modified, and respondents having agreed to such modification, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Battle Creek Development Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 748 South Mississippi Boulevard, St. Paul, Minnesota.

Respondent Cortland J. Silver and James B. Seaton are officers of said corporation. They formulate, direct and control the policies, acts

and practices of said corporation, and their principal office and place of business is located at the above-stated address. .

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Battle Creek Development Co., a corporation, its successors and assigns, and its officers, and Cortland J. Silver and James B. Seaton, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, or oral sales presentation offering for sale, sale, or distribution of watches, jewelry, diamonds, radios, clocks, tape recorders, dinnerware, tableware, or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Sale," or "* * * Surplus Stock Sale" or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Using the words "Sale," or "* * * Surplus Stock Sale," or any other word or words of similar import or meaning, in advertising or other promotional material containing non-sale items, without clearly and conspicuously revealing in immediate conjunction with said representations which items are sale items.

3. Using the words "Was," "Regular," "Reg.," or any other words 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 respondents for a reasonably substantial period of time in the recent, regular course of their business, or misrepresenting, in any manner, the usual or regular selling price of respondents' merchandise.

4. Using the term "Save 20%," "Save 25%," "From 20% to 32% off" or "1/3 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.

5. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amount-

ing to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of 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 by purchasing any of said merchandise (customers are afforded savings amounting to the difference between respondents' stated price and compared value price for comparable merchandise, 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.

6. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

7. Representing, directly or by implication, that respondents' credit terms are lenient and representing directly that credit is available regardless of the credit rating, financial ability to pay or legal age status of potential customers.

8. Representing, directly or indirectly, through the use of the word gold, the abbreviation YG or WG, or the term yellow gold or any other words or abbreviations of similar import that products contain or are made or composed in whole or in part of gold or of a gold quantity, weight or fineness of alloy not actually used or contained therein.

9. Representing, directly or indirectly, through the use of the word "Pearl" or any other word or words of similar import or meaning, that imitation pearls are genuine pearls; *Provided, however*, That the foregoing shall not be construed to prohibit the use of the word "Pearl" to describe the appearance of said imitation pearls if, whenever used, the word "pearl" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated," or other words of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

10. Representing, directly or indirectly, through the use of the word "birthstone" or any other words of similar import or mean-

ing, that imitation or synthetic precious or semi-precious stones are genuine and descriptive of any product which is not in fact a natural stone of the type described.

11. Representing, directly or indirectly, that respondents' watches are waterproof.

12. Representing, directly or by implication, that any article of merchandise is guaranteed, without clearly and conspicuously disclosing the nature, conditions and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder; and unless respondents promptly and fully perform all their obligations and requirements, directly or impliedly represented under the terms of each such guarantee.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their respective operating divisions or departments and all jewelry store managers and sales personnel and secure from each a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed changes in the corporate respondent such as dissolution, assignment or sale resulting in the emerging 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 this order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

WEIL & CO., INC., ET AL.