

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.

IN THE MATTER OF

HATTIE CARNEGIE JEWELRY ENTERPRISES, LTD.,
ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND HOBBY PROTECTION
ACTS

Docket C-2625, Complaint, Jan. 20, 1975 - Decision, Jan. 20, 1975

Consent order requiring two New York City manufacturers and distributors of numismatic items, among other things to cease failing to make the word "copy" plainly and permanently on all imitation numismatic items manufactured by respondents.

Appearances

For the Commission: *Justin Dingfelder.*

For the respondents: *Arnold S. Jacobs, Shea, Gould, Climenko & Kramer, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Hobby Protection Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hattie Carnegie Jewelry Enterprises, Ltd., a corporation, and Gibraltar Mint, Inc., a corporation, and Lawrence Joseph and Howard N. Levine, individually and as officers of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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. Respondents Hattie Carnegie Jewelry Enterprises, Ltd., and Gibraltar Mint, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal offices and places of business both located at 10 E. 38th St., New York, N.Y.

Respondents Lawrence Joseph and Howard N. Levine are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the manufacture, and in the sale and distribution of various items of merchandise, including imitation numismatic items, to dealers and others for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause and for some time in the past have caused imitation numismatic items to be shipped from their place of business in the State of New York to retailers and others located in various other States in the United States, and respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have since Nov. 29, 1973, manufactured in the United States for distribution in commerce, and have distributed and sold in commerce copies of privately minted 1854 Liberty Head Twenty Dollar Gold Pieces and privately minted 1855 Liberty Head Fifty Dollar Gold Pieces. The aforesaid coins are imitation numismatic items, as defined in Section 7 of the Hobby Protection Act, and were not plainly and permanently marked "copy" as required by Section 2(b) of said Act.

PAR. 5. Respondents' aforesaid acts and practices as alleged in Paragraph Four hereof were and are a violation of Section 2(b) of the Hobby Protection Act, and such violation is an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. Pursuant to Section 4(b) of the Hobby Protection Act, the aforesaid acts and practices of respondents constituted and now constitute a violation 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Hobby Protection and Federal Trade Commission Acts; 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 considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Hattie Carnegie Jewelry Enterprises, Ltd., and Gibraltar Mint, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business both located at 10 E. 38th St., N.Y., N.Y.

Respondents Lawrence Joseph and Howard N. Levine are officers of said corporations. They formulate, direct and control the policies, acts and practices of said corporations and their address is the same as that of said corporate respondents.

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 Hattie Carnegie Jewelry Enterprises, Ltd., and Gibraltar Mint, Inc., corporations, their successors and assigns, and their officers, and Lawrence Joseph and Howard N. Levine, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture and distribution of any imitation numismatic item, as

"imitation numismatic item" is defined in the Hobby Protection Act (Pub.L. 93-167, 15 U.S.C. § 2101, *et seq.*) do forthwith cease and desist from:

Failing to mark "COPY" plainly and permanently on all imitation numismatic items manufactured by respondents, as required by Section 2(b) of said Act. The word "COPY" shall appear in capital letters, in the English language, incused in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) and a minimum depth of three-tenths of one millimeter (0.3 mm) or to one-half (1/2) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm).

It is further ordered, That corporate respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least 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 individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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, setting forth in detail the manner and form in which they have complied with this order.

Order

85 F.T.C.

IN THE MATTER OF
HOLIDAY MAGIC, INC., ET AL.
MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2, OF THE
CLAYTON ACT

Docket 8834. Decision, Oct. 15, 1974 Order, Jan 21, 1975*

Order modifying Final Order issued against respondents on Oct. 15, 1974, 40 F.R. 10665, 84 F.T.C. 748, by deleting Paragraph V of the order which required corporate respondent and respondent Olivo to make restitution as provided therein.

Appearances

For the Commission: *Joseph S. Brownman* and *D. Stuart Cameron*.
For the respondents: *Alvin H. Goldstein, Jr., Tuckman, Goldstein & Philips*, San Francisco, Calif.

ORDER REOPENING PROCEEDING AND MODIFYING FINAL ORDER

The Commission's final order in this matter, dated Oct. 15, 1974, provided, in Paragraph V, that respondent Olivo should make restitution as provided therein, and that corporate respondent, Holiday Magic, should also make restitution. The requirement as to Holiday Magic, however, was to be effective only in the event that the company should cease to be in compliance with a district court order also requiring that it make restitution. By order dated Jan. 8, 1975, the Commission denied a motion of respondent Olivo to reconsider its order as to him.

In its opinion, the Commission recognized that its action in ordering restitution, in particular its assertion that it possessed the authority to do so, was contrary to the holding of the Ninth Circuit Court of Appeals in the case of *Heater v. Federal Trade Commission*, No. 73-1750, Sept. 11, 1974 [503 F.2d 321 (1974)]. In footnote 11, page 23 [84 F.T.C. 1045] of its final decision, the Commission noted its disagreement with the holding in *Heater* and stated that it would seek to obtain review of the decision by the Supreme Court.

Subsequent to rendition of the Commission's final order in this matter, and rendition of its order denying the motion to reconsider, the Commission has determined that it will not seek review of the *Heater* decision by the Supreme Court. While this determination should not be construed to signify a change in the view of the Commission regarding

* Reported in 84 F.T.C. 748. Petitions for review of the Oct. 15, 1974 order to cease and desist were filed in the Court of Appeals for the Ninth Circuit. Subsequently, the appeals were dismissed pursuant to petitioners' motion.