

*It is further ordered,* That the hearing examiner's initial decision, as modified and supplemented by the Commission's opinion, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents, National Trade Publications Service, Inc., and Melvin R. Lindsey, 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 the order to cease and desist contained herein.

Commissioner Elman not participating.

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IN THE MATTER OF

ART NATIONAL MANUFACTURERS  
DISTRIBUTING CO., INC., ET AL.

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

*Docket 7286. Complaint, Oct. 24, 1958—Decision, May 10, 1961*

Order requiring two associated concerns with common officers—a catalog mail order house and a watch manufacturer which made a substantial part of its sales through the former's catalog—to cease misrepresenting the size and extent of their business quarters, or the length of time in business; representing falsely that their "Louis" watches were shockproof, had been awarded a Gold Medal, were jeweled with rubies, and were guaranteed; and to cease preticketing their watches with excessive prices represented thereby as the usual retail prices.

*Mr. Harry E. Middleton, Jr.,* for the Commission.

*Mr. B. Paul Noble,* of Washington, D. C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

This proceeding is based upon a complaint brought under §5 of the Federal Trade Commission Act, charging respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution of various items of merchandise, including watches.

This proceeding is now before the Hearing Examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions of law filed by all parties. The Hearing Examiner has given consideration to the proposed findings of fact and conclusions submitted, and all find-

## Findings

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ings of fact and conclusions proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The motion to dismiss the complaint filed by the respondents is denied.

The Hearing Examiner, having considered the entire record herein, makes the following findings as to the facts and conclusions drawn therefrom, and issues the following order:

## FINDINGS OF FACT

1. Respondents Art National Manufacturers Distributing Co., Inc., hereinafter referred to as "Art National", and Louis Watch Company, Inc., hereinafter referred to as "Louis Watch", are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Their offices and principal places of business are, respectively, 58-40 Borden Avenue, Masspeth, New York, and 580 Fifth Avenue, New York, New York.

2. Respondents Louis Friedman, Martin Friedman and Albert Friedman are officers of said corporations. The individual respondents have participated in the formulation, direction and control of the policies, acts and practices of the corporate respondents, and have cooperated in carrying on the practices hereinafter found, except that respondent Martin Friedman has not been shown to have participated in the conduct of the affairs of Louis Watch, although he was nominally an officer of that corporation.

3. The respondents are engaged in interstate commerce.

4. Respondents are in competition with other catalog merchandisers and watch importers.

5. Art National publishes catalogs, circulars and other printed material, and such material is disseminated in commerce.

6. Art National represented that it has been in business for thirty-two years. Art National, however, was organized and incorporated in 1951.

7. Louis Watch represented that it was established in 1904, but this firm was not organized and incorporated until 1932.

8. The corporate respondents impliedly represented that the buildings depicted in their advertising were entirely occupied by them, when in fact each of them occupied only a small portion of the buildings depicted in their advertising.

9. Art National represented that it sold its merchandise at America's lowest prices. However, competitors of Art National sold many of the same items of merchandise at prices as low as those of this respondent, and respondent, in many instances, did not sell at wholesale prices.

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10. Louis Watch represented that its watches were Gold Medal Award winners, but its watches have never been awarded a gold medal or any other kind of medal.

11. Louis Watch represented that the jewels in its watches were rubies. The jewels in Louis watches were not rubies, but were made of synthetic material.

12. Louis Watch represented that certain of its watches were shockproof, but they were not shockproof.

13. Louis Watch represented that its watches carried a "full year's written guarantee", but the written guarantee furnished Louis Watch purchasers, against "any original defects or workmanship", did not set out the manner in which the guarantor would perform, nor was such disclosure made in the Louis Watch advertisements.

14. The evidence does not establish whether or not the suggested resale prices with which respondent Louis Watch preticketed its watches were the prices at which such watches were usually and customarily sold at retail. Those sold by Art National through its catalog were sold for substantially less than Louis Watch's preticketed prices, and a number of peddlers, discount dealers and wholesalers sold them at retail for less than the preticketed prices; but all of the retailers who operated retail jewelry stores, who were called as witnesses, sold them at the suggested resale or preticketed prices. The evidence does not permit a determination that the usual or customary resale prices were less than the preticketed prices, nor does it permit a determination that the preticketed prices were fictitious.

## CONCLUSIONS

The allegations of the complaint relating to the preticketing of watches with fictitious retail prices have not been sustained by the evidence.

The other acts and practices of respondents, as hereinabove found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered,* That respondent Art National Manufacturers Distributing Co., Inc., a corporation; its officers; respondents Louis Friedman, Martin Friedman and Albert Friedman, individually and as officers of said corporation; and their agents, representatives and

employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said corporation has been in existence, or that said corporation or individuals have been in business for any period or length of time that is not in accordance with the facts;

2. That respondents occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

3. That respondent Art National Manufacturers Distributing Co., Inc. sells its merchandise at America's lowest prices, or misrepresenting in any other manner its prices as compared to those of its competitors;

4. That Louis watches are shockproof.

*It is further ordered,* That respondent Louis Watch Company, Inc., a corporation; its officers; respondents Louis Friedman and Albert Friedman, individually and as officers of said corporation; and their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said corporation has been in existence, or that said corporation or individuals have been in business for any period or length of time that is not in accordance with the facts;

2. That they occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

3. That Louis watches have been awarded a Gold Medal or any other kind of medal;

4. That the jewels in Louis watches are rubies;

5. That Louis watches are shockproof.

OPINION OF THE COMMISSION

By DIXON, *Commissioner*:

The complaint in this proceeding was issued October 24, 1958. In it the respondents are charged with having made false, misleading and deceptive statements or representations in promotional material in connection with the interstate sale of a wide variety of goods including watches. It is alleged that these practices violate Section 5 of the Federal Trade Commission Act.

After an answer had been filed the respondents changed counsel and upon request were granted permission to file new and somewhat different answers. Issue having been joined the matter proceeded to hearing. After three days of hearings during which the testimony of eight witnesses was heard, the hearing examiner became fatally ill and on July 2, 1959, a substitute hearing examiner was appointed in his stead.

On July 28, 1959, we denied respondents' interlocutory appeal from the order replacing the hearing examiner on the ground that respondents had failed to show that their right to a full and fair hearing had in any manner been prejudiced by the substitution. Hearings in support of and in opposition to the complaint were then held in several cities throughout the country culminating in New York City on June 28, 1960.

The hearing examiner's initial decision partially upholding and partially dismissing the complaint was filed on October 27, 1960. The proceeding is before us on cross-appeals by respondents and counsel supporting the complaint. The appeal of counsel supporting the complaint makes two assignments of error while respondents plead that the hearing examiner erred in nine of his findings and charge further errors in five legal questions.

Respondent Art National Manufacturers Distributing Co., Inc., is a "catalog mail order house" selling a sundry line of hard goods to consumers and occasionally to retailers. This proceeding is almost entirely concerned with alleged false and deceptive representations made in the Art National catalog distributed to more than 400,000 addressees.

Louis Watch Company, Inc., is a manufacturer and distributor of watches. A substantial part of its total sales are made through the medium of Art National. Several of the specific charges against this respondent involve its advertising appearing in the Art National catalog while others deal with practices engaged in while distributing watches through other media.

The two corporate respondents are of a type commonly referred to as "family" corporations. They are completely owned and managed by the Friedman family and three of the members of that family, the father and two sons, are named as party respondents. The evidence clearly indicates interlocking control and management of the two corporations through the medium of common officers.

The respondents admit that respondent Louis Friedman "owns" and "runs" respondent Louis Watch Company, Inc., and that respondent Albert Friedman manages and formulates the policy of respondent Art National Manufacturers Distributing Co., Inc. They

deny that respondent Martin Friedman has any authority or control in either corporation. The evidence shows that Martin Friedman owns 25% of the stock of Art National; that he was its vice-president when it was incorporated, and that his brother Albert was "not too sure" that he was still the vice-president at the time of hearing. These might be rather tenuous grounds for holding Martin Friedman as a party respondent but we do not have to rely on them alone. Mr. Louis Friedman, the father of Albert and Martin, when asked whether he and his two sons owned and ran Art National testified: "Art National, yes. Well, they actually run it, to be more specific." This statement allays any question of Martin Friedman's responsibility for the operation of respondent Art National and with it any doubt concerning his being a proper party to this proceeding.

Several of respondents' assignments of error can be disposed of without extended discussion since they have been met with such frequency in the past that their solution presents no problem for which a clear and controlling precedent has not been established. One such plea is respondents' claim that they have discontinued or abandoned several of the practices indicted by the complaint and have no intention to again engage in them. To resolve such questions we generally look to the timing and circumstances surrounding the alleged discontinuance. In this case it is admitted that the practices were not discontinued until the Commission attorney investigating this matter informed respondents of their questionable nature. Such discontinuance after the commencement of proceedings will not support a conclusion or give assurance that the practices will not be resumed, and under such circumstances we have consistently refused to dismiss complaints. E.g., *Ward Baking Company*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961). Respondents here have presented no grounds which would justify our departure from past holdings and we accordingly reject their plea of abandonment.

Another of respondents' pleas which appears to fly in the face of established precedent is the contention that the substitution of hearing examiners during the course of the hearing had the effect of denying them a fair trial. They urge that the replacement hearing examiner did not hear the testimony of all witnesses and may not make findings which are to any extent based upon testimony not offered in his presence. Respondents cite no legal precedent for this proposition, for indeed there is none. A leading case on this point is *Gamble-Skogmo, Inc. v. Federal Trade Commission*, 211 F.2d 106 [5 S.&D. 603]

