

Complaint

64 F.T.C.

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

*It is further ordered.* That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

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IN THE MATTER OF

BENRUS WATCH COMPANY, INC., ET AL.

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

*Docket 7352. Complaint, Jan. 8, 1959—Decision, Feb. 28, 1964*

Order requiring two New York City associated distributors of watches to wholesalers, retailers and premium users for resale to the public, to cease using—in preticketing their watches, and in price lists, catalogs, newspaper and magazine and other advertising—fictitious amounts as the usual retail prices; setting forth fictitious amounts as retail prices from which reductions were to be made for trade-ins, allowance certificates and other reduction offers, and representing falsely that dealers would make such reductions against the indicated retail price; representing falsely that their watches were guaranteed and “shock proof”; failing to disclose the true metal content of bezels; and placing in the hands of purchasers for resale means for misleading the purchasing public in the above respects.

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 Benrus Watch Company, Inc., a corporation, Belforte Watch Company, Inc., a corporation, S. Ralph Lazrus, Oscar M. Lazrus and Benjamin Lazrus, individually and as officers of the above corporation, and Harvey M. Bond, Stanley M. Karp, Norman Slater, Samuel M. Feldberg, Jay K. Lazrus, Robert Weil, Martin J. Rasnow, Robert

Gasser, Clifford L. J. Siegmeister, Leo Hyman, and Julian Lazrus, individually and as officers of Benrus Watch Company, Inc., 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. Respondents Benrus Watch Company, Inc., and Belforte Watch Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal office and place of business located at 50 West 44th Street, New York 36, New York.

Respondents S. Ralph Lazrus, Oscar M. Lazrus and Benjamin Lazrus are officers of both of the aforesaid corporations. Harvey M. Bond, Stanley M. Karp, Norman Slater, Samuel M. Feldberg, Jay K. Lazrus, Robert Weil, Martin J. Rasnow, Robert Gasser, Clifford L. J. Siegmeister, Leo Hyman and Julian Lazrus are officers of the Benrus Watch Company, Inc. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, and selling of watches to wholesalers, retailers, and premium users, for distribution to the public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused, their said products when sold to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia and maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of attaching or causing to be attached price tickets to their said products upon which certain amounts are printed. Respondents have also disseminated, or caused to be disseminated, price lists, catalogs, brochures, leaflets, newspaper and magazine advertisements, and other forms of advertising, in which certain amounts are shown as the retail prices of respondents' products. Respondents thereby represent, directly or by implication, that said amounts are the usual and regular retail prices of said products. In truth and in fact said amounts are fictitious and in excess of the usual and regular retail prices of said products.

PAR. 5. Respondents, for the purpose of inducing the purchase of their products, have disseminated or caused to be disseminated newspaper advertisements and other forms of advertising which contain statements that a designated amount will be granted as a trade-in allowance for an old watch, toward the purchase of a new watch, the product of respondents. Respondents thereby represent that by trading in an old watch a purchaser will save such designated amount as compared with the usual and regular retail price of said new watch, and that the purchaser by trading in an old watch will be obtaining a new watch, product of respondents, at a reduction of such designated amount below the usual and regular retail price of said new watch. In truth and in fact the purported trade-in allowance does not result in a saving to the purchaser, of such designated amount or any other amount; trading in an old watch does not enable the purchaser to obtain a new watch at a reduction of such designated amount or any other amount below the usual and regular price; the usual and regular prices quoted in such advertising are fictitious, misleading and deceptive.

PAR. 6. Respondents further use deceptive "allowance certificates" by representing in nation-wide advertising that they and their dealers will allow a certain amount against the advertised price of their products. In truth and in fact, their products are not usually and regularly sold at the said advertised price and the use of the "allowance certificate" does not effect an actual saving for the purchaser or prospective purchaser of respondents' products. Furthermore, dealers in respondents' products do not uniformly honor such "allowance certificates."

PAR. 7. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said products respondents have made and are making false, deceptive and misleading representations through nationally distributed magazines, newspapers and other advertising media that certain low-priced models of their products are available at respondents' dealers, when such is not the fact, such representations being made to induce prospective purchasers of their products to make inquiry at the dealer's store, whereby the dealer can then induce the sale of more expensive models.

PAR. 8. Respondents represent in their advertising that their watches are guaranteed by the use of such terms as "guaranteed", "fully guaranteed", "guaranteed by Benrus", and other terms and expressions of which these are typical. Respondents also represent in guarantee certificates that their watches will be serviced upon payment of one dollar. In truth and in fact, the representations as to

guarantee are false, misleading and deceptive. The fact that the guarantee provides for payment of a service charge is not set forth in advertising, and the respondents frequently impose service charges in excess of those set forth in the certificates of guarantee. The terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not clearly and conspicuously disclosed in close conjunction with the representations of guarantee.

PAR. 9. Respondents further deceptively represent that their watches are "shock proof" or "shock protected". In truth and in fact, their watches are not "shock proof" or "shock protected" in every respect.

PAR. 10. Respondents' watches are in cases, the bezels of which have been treated or processed to simulate or have the appearance of precious metal, that is, gold or gold alloy. Said watch cases are not marked to disclose clearly that the bezels are composed of base metal. The practice of respondents in offering for sale and selling watches with bezels which have been treated or processed to simulate or have the appearance of precious metal as aforesaid without disclosing clearly the true metal composition of said bezels is misleading and deceptive and has a tendency and capacity to lead members of the purchasing public to believe that the said bezels are composed of precious metal.

PAR. 11. Respondents represent in advertising through use of terms such as "chrome top case" that certain of their watches contain tops or bezels composed throughout of chromium or chromium steel, commonly known as chrome steel or as stainless steel. In truth and in fact said bezels are not composed throughout of chromium or chromium steel and contain only a surface coating or plating of chromium. The practice of respondents in this respect is misleading and deceptive, as watch cases or parts thereof composed throughout of chromium or chromium steel are of greater utility than watch cases which are only surface coated or plated with chromium or chromium alloy.

PAR. 12. Respondents, by furnishing advertising and labeling material and selling and distributing watches to dealers, retailers and premium users as above set forth, furnish said dealers, retailers and premium users with means and instrumentalities by and through which they may mislead and deceive the public as to usual and regular prices, availability, quality and construction of respondents' watches, the amount of allowances, savings and price reductions in connection with the sale of respondents' watches, the nature and ex-

tent of respondents' guarantee and the manner of performance thereunder.

PAR. 13. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of watches of the same general kind and nature as that sold by respondents.

PAR. 14. 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 respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 15. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

*Weisman, Allan, Spett & Sheinberg*, New York, N. Y., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

MAY 23, 1962

Respondents are charged in the Commission's complaint, issued on January 8, 1959, with having made false, misleading and deceptive statements with respect to their watches in the conduct of their business. The crux of the substantive charges alleged in the complaint is as follows:

1. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of attaching, or causing to be attached, price tickets to their said products, upon which certain amounts are printed. Respondents have also disseminated, or caused to be disseminated, price lists, catalogs, brochures, leaflets, newspaper and magazine advertisements, and other forms of advertising in which certain amounts are shown as the retail prices of respondents' products. Respondents thereby represent, directly or by implication,

that said amounts are the usual and regular retail prices of said products. In truth and in fact, said amounts are fictitious and in excess of the usual and regular retail prices of said products. (See paragraph 4 of complaint.)

2. Respondents, for the purpose of inducing the purchase of their products, have disseminated, or caused to be disseminated, newspaper advertisements and other forms of advertising which contain statements that a designated amount will be granted as a trade-in allowance for an old watch, toward the purchase of a new watch, the product of respondents. Respondents thereby represent that by trading in an old watch a purchaser will save such designated amount as compared with the usual and regular retail price of said new watch, and that the purchaser by trading in an old watch will be obtaining a new watch, product of respondents, at a reduction of such designated amount below the usual and regular retail price of said new watch. In truth and in fact, the purported trade-in allowance does not result in a saving to the purchaser of such designated amount or any other amount; trading in an old watch does not enable the purchaser to obtain a new watch at a reduction of such designated amount or any other amount below the usual and regular price; the usual and regular prices quoted in such advertising are fictitious, misleading and deceptive. (See paragraph 5 of complaint.)

3. Respondents further use deceptive "allowance certificates" by representing in nation-wide advertising that they and their dealers will allow a certain amount against the advertised price of their products. In truth and in fact, their products are not usually and regularly sold at the said advertised price and the use of the "allowance certificate" does not effect an actual saving for the purchaser or prospective purchaser of respondents' products. Furthermore, dealers in respondents' products do not uniformly honor such "allowance certificates." (See paragraph 6 of complaint.)

4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said products respondents have made and are making false, deceptive and misleading representations through nationally distributed magazines, newspapers and other advertising media that certain low-priced models of their products are available at respondents' dealers, when such is not the fact, such representations being made to induce prospective purchasers of their products to make inquiry at the dealer's store, whereby the dealer can then induce the sale of more expensive models. (See paragraph 7 of complaint.)

5. Respondents represent in their advertising that their watches are guaranteed by the use of such terms as "guaranteed", "fully

