

Complaint

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sion and to the terms, conditions and prohibitions of this Order as it applies to WEAR-EVER ALUMINUM, INC., or to prior intervening successors to the aforementioned business of selling aluminum stock pots and pans.

It is further ordered, That the respondent WEAR-EVER ALUMINUM, INC. 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

PROSPECT BRACELET COMPANY, INC., ET AL.

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

Docket 8611. Complaint, Dec. 27, 1963—Decision, Oct. 3, 1964

Order requiring a New York City distributor of watches and watchbands to cease failing to disclose adequately the foreign origin of its imported watchbands and preticketing said product with excessive prices.

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 Prospect Bracelet Company, Inc., a corporation, and Sheldon Parker, individually and as an officer 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. Respondent Prospect Bracelet Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 188 West 4th Street in the city of New York, State of New York.

Respondent Sheldon Parker is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of

watchbands to manufacturers and distributors of watches as well as to retailers for resale 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 product, 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 in the District of Columbia, and maintain, and at all times herein mentioned have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Said watchbands consist in whole or in substantial part of components which were manufactured, in and imported from, Hong Kong and Japan. When offered for sale or sold by respondents, said watchbands do not bear disclosure showing that they are substantially of foreign origin.

PAR. 5. By the aforesaid practices, respondents place in the hands of watch manufacturers, distributors and retailers, means and instrumentalities by and through which they may mislead the public as to the place of origin of said watchbands or the substantial components thereof.

PAR. 6. In the absence of an adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise, or, substantial components thereof, is, therefore, to the prejudice of the purchasing public.

PAR. 7. Respondents, for the purpose of inducing the purchase of their watchbands, have engaged in the practice of using fictitious prices by attaching or causing to be attached to their watchbands, tickets or tags upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and regular retail prices of said watchbands. In truth and in fact, said amounts are not the usual and regular retail prices of said watchbands, but are in excess of prices at which said watchbands generally sell at retail in some of the trade areas where the representations are made.

PAR. 8. By the aforesaid practices, respondents place in the hands of watch manufacturers, distributors and retailers, means and instru-

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mentalities by and through which they may mislead the public as to the usual and regular price of said watchbands.

PAR. 9. 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 metal expansion watchbands of the same general kind and nature as that sold by the respondents.

PAR. 10. The use by respondents of the false, misleading and deceptive representations and practices hereinabove set forth, and the failure to disclose the foreign origin of their watchbands or of substantial components of their watchbands, have had, now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

PAR. 11. 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 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.

Mr. Herbert L. Blume for the Commission.

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

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

AUGUST 25, 1964

The complaint in this proceeding charges respondents with failing to disclose adequately the foreign origin of watchbands imported in a finished state, or as components, and sold by them in interstate commerce. Respondents are further charged with deceptive pricing practices.

Respondents' failure to disclose adequately the foreign origin of their watchbands and components is alleged in the complaint to constitute a violation of Section 5 of the Federal Trade Commission Act because "* * * a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise, or, substantial components thereof, is, therefore, to the prejudice of the purchasing public."

Respondents, for the purpose of inducing the purchase of their watchbands, have engaged in the practice of using fictitious prices by attaching or causing to be attached to their watchbands, tickets or tags upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and regular retail prices of said watchbands. In truth and in fact, said amounts are not the usual and regular retail prices of said watchbands, but are in excess of prices at which said watchbands generally sell at retail in some of the trade areas where the representations are made.

The complaint asserts that respondents' said practices "* * * place in the hands of watch manufacturers, distributors and retailers, means and instrumentalities by and through which they may mislead the public as to the place of origin of said watchbands or the substantial components thereof * * *" and "* * * through which they may mislead the public as to the usual and regular price of said watchbands."

Respondents' acts and practices are asserted to 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." 15 U.S.C.A., Sec. 41, *et seq.*

After the instant complaint was released for service, the Federal Trade Commission issued a new set of Guides Against Deceptive Pricing, effective January 8, 1964. Commissioner Everette MacIntyre then issued a separate statement commenting upon the new Guides, in which he stated, *inter alia*:

The nub of the problem as I see it is that these Guides are not, as they purport, restatements of the law; the changes introduced here are too sweeping for that. It is fair to say that the Guides in many respects are sharply at variance with the body of law on this subject painfully built up by the Commission and courts over a number of decades. The result may well be the opposite of that intended—uncertainty for consumers, the businessman and the Commission's staff alike. Under the circumstances, there is a serious question that we can sustain the necessary vigour of enforcement even with the best of intentions.

On February 17, 1964, the Commission, as a result of the new Guides, took action in *Clinton Watch Company*, Docket No. 7434 [64 F.T.C. 1443], and Commissioner MacIntyre issued a separate statement at that time. After the United States Courts of Appeals had sustained the Commission's position in appeals from its pricing orders in *The Regina Corporation*, 322 F. 2d 765 (C.A. 3, 1963), and *Giant Food, Inc.*, 322 F. 2d 977 (C.A.D.C., 1963), the Commission conducted post-appeal proceedings in which the Commission modified its prior orders. On April 7, 1964, the Commission amended its *Regina* order (Docket No. S323) [65 F.T.C. 246], and on August 5, 1964 [p. 476 herein], the Commission amended its *Giant Food* order. Attached as an appendix are the pertinent portions of the amended orders.

After this hearing record was closed, respondents moved to dismiss on the grounds that Federal Trade Commission Administrative Bulletin No. 64-10, dated May 6, 1964, represented a change in the "foreign origin" policy of the Commission and that had such policy been in effect at the time the complaint issued, the instant complaint would not have issued. The hearing examiner determined that such motion should be acted upon only by the Federal Trade Commission itself, and certified respondents' motion to the Commission. On July 30, 1964, respondents' motion to dismiss based upon Administrative Bulletin 64-10 was denied by the Commission.

Several prehearing conferences were conducted. Pursuant to leave granted, respondents, on March 26, 1964, filed an amended answer in substitution for their original answer. Respondents' counsel represented at a prehearing conference convened on March 19, 1964 "The amended answer will admit everything, every substantial allegation in the complaint except public interest and will set up abandonment as a defense." Said amended answer filed March 26, 1964, in fact put in contest as many issues as the original answer. Sheldon Parker, respondent, sole stockholder of corporate respondent Prospect Bracelet Company, Inc., and policy maker for the corporation, was the only witness. He testified for both sides. Documentary evidence and physical exhibits have been received. Additional hearings, originally set for May 28, 1964, conditioned upon prior Federal Trade Commission approval, were cancelled because they were not requested by counsel.

Complaint counsel filed his proposed findings, conclusions and brief on June 29, 1964. Respondents' counsel moved on three separate occasions for extensions of time within which to file proposed findings, conclusions and brief. All such requested extensions were granted. However, as this initial decision is being written, respondents' counsel has not filed any proposed findings, conclusions or brief as he represented he would do.

Findings of fact not made herein in the form suggested, or in substantially that form, hereby are rejected. All motions heretofore made, which have not previously been specifically ruled upon, hereby are overruled and denied. Based upon the entire record, including the testimony, exhibits and proceedings of record, the examiner makes the following:

FINDINGS OF FACT

1. Corporate respondent Prospect Bracelet Company, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 188 West 4th Street, New York, New York.

2. Individual respondent Sheldon Parker was principal stockholder and an officer of the corporate respondent. Parker formulated, directed and controlled the acts and practices of the corporate respondent. Parker's address was the same as that of the corporate respondent.

3. Up to and including April 30, 1963, respondents had been engaged in advertising, offering for sale, selling and distributing watchbands to manufacturers, assemblers, and distributors of watches. Respondents also sold their watchbands to retailers for resale to the public for replacement of watchbands then being worn by retail customers.

4. In the course and conduct of their business, respondents caused their 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 in the District of Columbia. Respondents maintained, and at all times relevant to this proceeding, maintained a substantial course of trade in their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this complaint. This proceeding is in the public interest.

6. In the conduct of their business, and at all times pertinent to this proceeding, respondents were in competition, in commerce, with firms and individuals in the sale of metal expansion watchbands of the same general kind and nature as those watchbands sold by respondents.

7. In the absence of adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that such product is of domestic origin.

8. The watchbands which respondents sold in interstate commerce consisted of substantial components which were manufactured in, and imported from Hong Kong and Japan. When offered for sale or sold by respondents the watchbands did not bear adequate disclosure showing that they were of foreign origin. Through their failure adequately to disclose the foreign origin of components or substantial parts of their watchbands, respondents placed in the hands of watch manufacturers, or assemblers, distributors and retailers, the means and instrumentalities by and through which such watch manufacturers, or assemblers, distributors and retailers, were able to mislead the public as to the place of origin of said watchbands and substantial component parts of the watchbands.

9. Respondents' counsel asserts Prospect Bracelet Company, Inc., ceased doing business as a corporation, and liquidated its inventory as of April 30, 1963. The best evidence of such fact would have been

