

Syllabus

IN THE MATTER OF
M. S. DISTRIBUTING COMPANY

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

Docket 7745. Complaint, Jan. 12, 1960—Decision, Dec. 17, 1962

Order setting aside desist order of May 19, 1960 (56 F.T.C. 1432), requiring cessation of concealed "payola", the enactment of federal statute since the date of the order constituting effective deterrent of the type of practice involved.

ORDER GRANTING RESPONDENTS' PETITION TO REOPEN AND SET ASIDE
ORDER TO CEASE AND DESIST

Upon consideration of respondents' petition, filed November 13, 1962, requesting that the decision of the Commission in this proceeding entered May 9, 1960 [56 F.T.C. 1432], be reopened and the order to cease and desist be set aside, and

It appearing from the matters set forth in respondents' petition that vacation of the order herein would be equitable and in the public interest, and

It further appearing that the enactment by Congress on September 13, 1960, of Public Law 86-752 (74 Stat. 895, 47 U.S.C. 317) constitutes an effective and sufficient deterrent against future violations of the type alleged in this proceeding:

It is ordered, That respondents' petition be, and it hereby is, granted, and that the order to cease and desist previously entered in this proceeding be, and it hereby is, set aside.

IN THE MATTER OF

BALDWIN BRACELET CORP., ET AL.

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

Docket 8316. Complaint, Mar. 14, 1961—Decision, Dec. 18, 1962

Order requiring New York City distributors to cease selling metal expansion watch bands imported from Hong Kong with no marking to indicate their foreign origin; and advertising watch bands as "guaranteed" or "fully guaranteed" when the guarantee was limited and conditional.

Complaint

61 F.T.C.

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 Baldwin Bracelet Corp., a corporation, and Nathan Goodman and Anne Goodman, 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. Respondent Baldwin Bracelet Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 22 West 48th Street, New York, N. Y.

Individual respondents Nathan Goodman and Anne Goodman are officers of the corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts, policies and practices complained of herein. The place of business of said individual respondents is the same as that of the corporate respondent.

PAR. 2. The respondents are now and for some time last past have been engaged in the sale and distribution of products, including metal expansion watch bands. The respondents cause their said products, when sold, to be transported 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 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. 3. In the course and conduct of their business, respondents sell and distribute, to watch manufacturers or assemblers, and to watch band jobbers and dealers, their said products, namely metal expansion watch bands. Said watch bands consist in whole or in substantial part of components which were manufactured in, and imported from, Hong Kong. When offered for sale or sold by respondents, said watch bands do not bear disclosure showing that they are substantially of foreign origin.

PAR. 4. When products consisting in whole, or in substantial part, of imported components are offered for sale and sold in the channels of trade, they are purchased and accepted as, and taken to be, products wholly of domestic manufacture and origin unless the products are labeled or marked in a manner which informs purchasers that the products, or substantial parts thereof, are of foreign origin.

A substantial portion of the purchasing public has a preference for products, including watch bands, which are wholly of domestic manufacture or origin, as distinguished from products which are in substantial part of foreign manufacture or origin.

PAR. 5. The failure of respondents to adequately disclose the foreign country or place of origin of their watch bands or the foreign country or place of origin of substantial components of their watch bands has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public as to the country or place of origin of said watch bands and into the erroneous and mistaken belief that such watch bands are of domestic manufacture, and into the purchase of substantial quantities of said watch bands by reason of said erroneous and mistaken belief.

PAR. 6. In the course and conduct of their business, respondents use the words "guaranteed" or "fully guaranteed" in the advertising of certain of their watch bands, thereby representing that said watch bands are guaranteed by them in every respect.

PAR. 7. Said advertising is false, misleading and deceptive. In truth and in fact, the guarantee is limited and conditional, and the limitations and conditions are not set forth in the advertising.

PAR. 8. Respondents, at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of watch bands.

PAR. 9. 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 watch bands or of substantial components of their watch bands, had, and now has, 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' watch bands. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 10. 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. David J. McKean for the Commission.

Mr. Ben Paul Noble, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

By complaint issued March 14, 1961, the Federal Trade Commission charged Baldwin Bracelet Corp., a New York corporation of 22 West 48th Street, New York, New York, and its officers, Nathan Goodman and Anne Goodman, his wife, with violations of the Federal Trade Commission Act resulting from their sale and distribution of metal expansion watch bracelets in commerce without disclosing that they consisted of parts manufactured in Hong Kong, and with representing that they were fully or unconditionally guaranteed when, in fact, a charge was imposed on persons seeking to avail themselves of the guaranty.

Although the case was concerned only with these two simple issues, because of obstructive tactics of the respondents, to which reference will be made below, four days of testimony, plus a preliminary deposition, consisting in all of more than 400 pages of typewritten transcript and more than 40 exhibits were required to complete the hearing.¹

Respondents at first denied all allegations of the complaint except that Baldwin Bracelet Corp. was a corporation doing business in New York and that Nathan Goodman was an officer and directed and controlled its acts and practices and that the business involved the sale and distribution of watch bracelets. During a pretrial conference, it was agreed that the admissions would be extended to the fact that the respondent corporation was engaged in interstate commerce within the meaning of the Federal Trade Commission Act and that it is in substantial competition with others in the sale of watch bracelets.

Because of the manner in which the respondents sought to defend this case, I shall start by setting forth the following which are my conclusory and ultimate

FINDINGS OF FACT

1. Respondent, Baldwin Bracelet Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 22 West 48th Street, New York City, New York.

2. It is a family corporation and its practices and business are controlled and directed by Nathan Goodman, its president and di-

¹ As a matter of fact, respondents even now contend because of their conduct to which reference will be made elsewhere that the hearing is not completed.

rector, and by his wife, Anne Goodman, its secretary-treasurer and director, who also are respondents herein.²

3. Respondents are engaged in the sale and distribution of metal expansion watch bracelets for the manufacture of most of which they are associated with a wholly owned affiliated corporation based in the Virgin Islands, also described by them as a "family" corporation.

4. The watch bracelets so manufactured are sold and distributed by them from their place of business in New York to purchasers in New York and in various other states of the United States and the District of Columbia. They maintain and at all times herein mentioned have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. They have been, and now are, in substantial competition, in commerce, with others engaged in the sale of watch bracelets.

5. Respondent Baldwin sells its watch bracelets to watch manufacturers and watch importers for attachment to watches as "original equipment" prior to their original sale of the watches. Respondent also sells watch bracelets to watch and jewelry wholesalers for distribution to consumers or users through retail jewelry outlets.

6. Approximately 20% of respondents' watch bracelets are prepared by them for ultimate direct sale at retail to consumers. For this purpose, they are attached to cards covered or enclosed with a transparent plastic packaging device, which in turn are displayed in retail stores on placards or racks prepared and distributed by respondents on which they have endorsed or caused to be endorsed prominently the eye-catching legends, "*Unconditionally Guaranteed*" or "*Fully Guaranteed.*"

7. The said watch bracelets in fact are not unconditionally and are not fully guaranteed because the retail purchaser is required, should he attempt to avail himself of the alleged guaranty, to pay to the respondents a sum of money (25¢ prior to 1960 and 35¢ thereafter). He is informed of this charge only if he reads certain material, printed only on the back of the card on which the watch bracelet is packaged, following its removal from the placard or rack prior, during or after the act of purchase. The so-called guaranty is limited further to one year, by the same material printed on the back of the packaging card.

8. All watch bracelets sold by the respondents are imported into

² Transcript:

Q. Do the two of you [Nathan Goodman and Anne Goodman] control and direct the policies and actions of respondent Baldwin Bracelet Corp.?

A. [Nathan Goodman] Yes, we do.

Q. And no one else has any hand in directing or controlling Baldwin?

A. No.

the United States. Of these, approximately 20% are marked as made in Hong Kong and are not involved in this proceeding. The balance (approximately \$700,000 in 1960 sales of approximately 1,200,000 bands) bear no marking to show where they are made and are sold with the aid of advertising, literature and displays which do not disclose where they are made.

9. In their promotion of the sales of these unmarked bracelets, respondents advertise that they are "made of the highest-grade American steels and gold-fill" and that "only the finest, first-quality American stainless steel and Gold Fill are used in the construction of every Baldwin Band." While they make these representations, they do not disclose that the actual manufacturing is not accomplished in the United States.

10. On the contrary, respondents, by their arrangements with their wholly owned family corporation in the Virgin Islands, cause the metal to be purchased in strips in the United States, cause it to be exported to Hong Kong, cause it to be fabricated into bracelet linkages and other parts in Hong Kong, cause these to be reexported out of Hong Kong to the Virgin Islands, and there cause two tube ends to be "fixed to the skeleton," following which the bracelets are degreased, polished, inspected, wrapped, boxed, crated and shipped to the United States. Other work done in the Virgin Islands, in the case of gold-filled top shell bracelets, consists only of an additional step in the assembly process. Such gold-filled top shell bracelets amount to about 25% of all the bracelets involved in this proceeding.

11. The essential, operative components of the metal expansion watch bracelets involved in this proceeding are fabricated in Hong Kong. In the form in which they are received in the Virgin Islands, even without being degreased and polished, they could serve as bracelets for holding watches on wrists following the clamping onto their ends of the tube ends to be attached to the watch handles made to receive them.

12. Thus the watch bracelets involved herein are substantially of Hong Kong origin.

13. Respondents, when offering these watch bracelets for sale in commerce in the United States, do not disclose that, in substance, they are fabricated in Hong Kong and not in the United States.

14. There is a definite preference on the part of purchasers of watch bracelets for those made in the United States, if price, style and quality factors are not such as to influence the purchase of such articles made elsewhere.

15. There is a reluctance on the part of substantial numbers of persons to buy articles made in Hong Kong.

16. Articles not made in the United States and not marked or otherwise identified as to the place where they are made have a tendency to lead potential purchasers to believe that they were made in the United States and cause them to buy such articles even though they might not have had they known where the articles were made.

17. A substantial portion of the consuming public prefers watch bracelets made in the United States to those substantially fabricated in Hong Kong.

From the beginning respondents took the attitude that the Federal Trade Commission had no right to bring this proceeding. Having taken that attitude, they engaged in every conceivable device to obstruct and defeat the proceeding. It is not necessary, for the purpose of this decision, to set forth in detail all that the respondents did. A few illustrations ought to be sufficient.

From the beginning and despite many warnings of the criminal aspect of his conduct, the respondent Nathan Goodman deliberately and flatly refused to answer proper questions addressed to him both by counsel supporting the complaint and by the hearing examiner. He persisted in this conduct throughout most of the hearing, even after the hearing examiner had read to him from the Federal Trade Commission Act as follows:

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.³

Respondents adopted their contumacious position because they took the attitude that the Federal Trade Commission never should have commenced this proceeding against them. They took it upon themselves to make their *private* determination that the Federal Trade Commission had no jurisdiction and that they were immune from its process. Such tactics have been attempted before, resulting only in sorry and expensive lessons for those who tried. There is the classic case which went to the United States Supreme Court, involving John L. Lewis and his United Mine Workers. Lewis was fined \$10,000 for his conduct and the Union was fined originally \$3,500,000 which the Supreme Court modified to an immediate payment of \$700,000 with the remain-

³ See *Sinclair v. United States*, 279 U.S. 263, in which a similar but more loosely worded statute was involved. Sinclair went to jail for three months and was fined \$500 for refusal to answer questions even though he claimed he did so "in good faith on the advice of competent counsel."

