

Complaint

63 F.T.C.

IN THE MATTER OF

## GRAYSON-ROBINSON STORES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION ACT*Docket 8482. Complaint, May 1, 1962—Decision, Nov. 6, 1963*

Order dismissing, for insufficiency of the record to prove the allegations, complaint charging a New York City retailer of cameras and its former parent corporation with making deceptive pricing and savings claims, misrepresenting the quality of certain camera lenses, and failing to disclose clearly the country of origin of cameras made in U.S.S.R., Occupied Germany.

## 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 Grayson-Robinson Stores, Inc., a corporation, and Maxwell H. Gluck, Stanley Roth, C. Louis Wood and Eugene F. Roth, individually and as officers of said corporation; and Peerless Camera Stores Corp., a corporation, and Maxwell H. Gluck, Stanley Roth, Herbert Ochshorn, Sidney Rosen, C. Louis Wood and Stanley Dorman, 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 respect thereof as follows:

PARAGRAPH 1. Respondent Grayson-Robinson Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 550 West 59th Street, New York, New York.

Respondents Maxwell H. Gluck, Stanley Roth, C. Louis Wood and Eugene F. Roth are individuals and officers of said corporate respondent Grayson-Robinson Stores, Inc. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Peerless Camera Stores 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 place of business located at 415 Lexington Avenue, New York, New York.

Respondents Maxwell H. Gluck, Stanley Roth, Herbert Ochshorn, Sidney Rosen, C. Louis Wood and Stanley Dorman are individuals

1208

## Complaint

and officers of said corporate respondent Peerless Camera Stores Corp. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their 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 cameras at retail 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 maintain, and at all times mentioned herein have maintained, a substantial course of trade in said cameras in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their cameras, respondents have made certain statements and representations, of which the following are typical but not all inclusive:

Save \$22.50 off List Price  
 Bolex 8 mm Movie Outfit  
 List \$172 (when bought separately) \$149.50  
 Revere Automatic 8 mm Movie Camera  
 \* \* \* \* \*  
 Comparable List \$89.50 Special \$49.95  
 Bonus Tag Item  
 Imported 35 mm  
 Canon L-I  
 Original List \$379.50—\$119.95

PAR. 5. Through the use of the amounts in connection with the word and terms "List", "Comparable List" and "Original List" respondents represented that said amounts were the prices at which the merchandise referred to was usually and customarily sold at retail in their trade area, and through the use of said amounts and the lesser amounts that the difference between said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in said trade area.

Through the use of the term "Canon L-I" respondents represented that the camera so designated contained a "Canon lens" or the lens with which Canon cameras were regularly and usually equipped.

PAR. 6. In truth and in fact, the amounts set out in connection with the words and terms "List", "Comparable List" and "Original List" were not the prices at which the merchandise referred to was usually

and customarily sold at retail in respondents' trade area, but were in excess of the price or prices at which the merchandise was generally sold in said trade area, and purchasers of respondents' merchandise would not realize a saving of the difference between the said higher and lower price amounts.

In truth and in fact, the "Canon L-I" camera was not equipped with a Canon lens but was equipped with a lens that was inferior to the Canon lens. The aforesaid representations were therefore false, misleading and deceptive.

PAR. 7. Among the cameras offered for sale and sold by respondents are cameras made in that part of Germany occupied by the U.S.S.R. and imported into the United States. While these cameras are marked to show the country of origin, said marking is so small and indistinct and so placed that it does not give or constitute adequate notice of the country of origin.

The containers in which the cameras are enclosed are not marked to show the country of origin, nor is the fact that the cameras are manufactured in that part of Germany occupied by the U.S.S.R. disclosed in respondents' advertisements offering said cameras for sale.

PAR. 8. When merchandise, including cameras, is offered for sale to the purchasing public and such merchandise is not marked or is not adequately marked showing that it is of foreign origin, such purchasing public understands and believes that such merchandise is of domestic origin, a fact of which the Commission takes official notice.

PAR. 9. A substantial portion of the purchasing public prefers merchandise, including cameras, that is manufactured in the United States over such merchandise that is manufactured in territory occupied by the U.S.S.R., of which fact the Commission also takes official notice.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of cameras of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents 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 are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

1208

## Initial Decision

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the 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(a)(1) of the Federal Trade Commission Act.

*Mr. Frederick J. McManus* and *Mr. Charles J. Connolly* of Washington, D.C., for the Commission.

*Dammann, Blank, Hirsch & Heming*, of New York, N.Y., by *Mr. Allen Blank*, of counsel, for respondents *Grayson-Robinson Stores, Inc.*, *Gluck, Stanley* and *Mr. Eugene Roth, Wood and Dorman*.

*Parker, Chapin & Flattau*, of New York, N.Y., by *Mr. Alvin Stein*, of counsel, for respondents *Peerless Camera Stores Corp.*, *Mr. Herbert Ochshorn* and *Mr. Sidney Rosen*.

## INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

This proceeding is concerned with alleged violations of the Federal Trade Commission Act. It is charged that the respondents engaged in unfair methods of competition and unfair or deceptive acts or practices in commerce. These were deceptive advertising of prices at which cameras were offered for sale, deceptive claims as to savings to be had, deception as to the brand and composition of a camera offered for sale, and a failure to show adequately the East German origin of cameras imported from and manufactured there and offered for sale in commerce.

## Preliminary Note as to the Respondents

Two corporate entities and a number of individuals have been charged in this proceeding. One of the entities is Grayson-Robinson Stores, Inc. (hereafter Grayson), which, for the purpose of this proceeding, may be regarded as having been a holding company. The other entity is Peerless Camera Stores Corp. (hereafter Peerless), all the stock of which had been owned by Grayson. The practices with which we are concerned were those of Peerless in the advertising of cameras which it had for sale in its retail store in New York City. Grayson was not engaged in the retail sale and distribution of cameras. Its only connection with the facts involved in this proceeding arose from its stock ownership of Peerless. The individuals, Maxwell H. Gluck, Stanley Roth, C. Louis Wood and Eugene F.

Initial Decision

63 F.T.C.

Roth are or were officers of Grayson. As a corollary to their holding such offices, they became officers or directors of Peerless. The two remaining individual respondents, Herbert Ochshorn and Sidney Rosen, were connected directly with Peerless and engaged directly in the operations of its business. This involved a large volume of distribution, at retail, of cameras, camera supplies, film, motion picture projectors, lenses, exposure meters, a myriad of camera accessories of all types, dark-room accessories and paper and chemicals (Tr. pp. 140, 141). Although its store was located in New York City, at 415 Lexington Avenue, it solicited its customers nationally by advertising in various photo magazines, such business being handled mainly by mail (Tr. pp. 8, 123-124; CX 12, CX 13, CX 14). Over-the-counter business was solicited by advertising in the New York City daily newspapers. These circulated not only in New York, but also in New Jersey and Connecticut. Some customers came from these adjoining states (Tr. pp. 7, 19-22).

#### Dismissal of Complaint as to Certain Respondents

At pretrial, a motion was made to dismiss the complaint as to all the respondents except Peerless and Herbert Ochshorn. That motion was "denied on the ground that if, in fact, the complaint should be dismissed as to any one or all of such respondents, that cannot be determined until after a hearing of the evidence to be offered herein." (Pretrial Order of July 27, 1962).

Thereafter, on August 14, 1962, Grayson filed a petition in the United States District Court for the Southern District of New York proposing an arrangement under Chapter XI of the Bankruptcy Act. To this day it has operated its business as a debtor in possession. Because of events which transpired in that proceeding, by motion dated January 21, 1963, counsel representing Grayson, Gluck, Stanley and Eugene Roth, Wood, Dorman (and also Sidney Rosen, with whom this division of the decision is not concerned) moved that the complaint against them be dismissed. One of the grounds was that none of those respondents (with the exception of Sidney Rosen) at any time participated in the acts set forth in the complaint. Other grounds were that the individuals had become connected with Peerless only because of their connection with Grayson, and that all the shares of Peerless stock and all other Grayson camera properties had been sold by Grayson to Berkey Photo, Inc. pursuant to order of the United States District Court, duly entered in the arrangement proceeding. It appeared from affidavits then and subsequently filed in

1208

## Initial Decision

support of the motion that the individuals (except Rosen) had had no actual operating connection with Peerless, but held their offices in that company by reason of their positions in the parent corporation, Grayson. It was also made to appear that neither the parent corporation, Grayson, nor any of those individuals since has been engaged in the camera business. Counsel supporting the complaint, in a document dated and filed January 28, 1963, formally consented to the granting of the motion to dismiss the complaint as to the respondents named in this division of this decision, except Sidney Rosen, saying, "The grounds cited by the motion as the basis for dismissal of the complaint insofar as it relates to these respondents appear to be sufficient for the granting thereof." In ruling on the motion, the Hearing Examiner, in a paper dated and filed February 20, 1963, said:

In view of the Commission's final order in The Borden Company and its opinion issued therewith, Docket No. 7129, January 30, 1963, the broad form products order procedure must be given consideration, even though Peerless was a wholly owned but separate corporation. It is the Hearing Examiner's opinion that whatever bearing this procedure might have on orders to be issued in cases involving wholly owned subsidiaries or divisions, it is not applicable to this particular case because of the Chapter XI arrangement proceeding, the sale of Peerless, the apparent complete separation of functions, the manner in which the various individuals became involved with Peerless, the completely autonomous nature of Peerless and the present divorcement of all the named individuals and of Grayson-Robinson from any activities in the camera business. In reciting these various factors, the Hearing Examiner does not mean to imply that any one of them, standing alone, might justify a departure from the rule in Borden but that all considered together, under the peculiar circumstances of this case, justify a disregard of the rule in this case. Moreover, the express consent by counsel supporting the complaint that the motion be granted also is an important factor which cannot be overlooked.

Because of Section 4.6(e), Rules of Practice, the Hearing Examiner deferred entering an order of dismissal, but this decision will provide for the dismissal of the complaint, without prejudice, as to the respondents Grayson, Gluck, Dorman, Wood, Stanley Roth and Eugene F. Roth.

## The Complaint

The case is concerned with alleged deceptive price and commodity advertising, and with alleged deception as to country of origin because of insufficient, indistinct or obscure marking of cameras offered for sale and failure to disclose origin in the advertising of such cameras.

Three illustrative advertisements are quoted in the complaint for the purpose of supporting the deceptive pricing charge. One is cited

Initial Decision

63 F.T.C.

also for the purpose of supporting the charge of commodity deception.

First, we find the following:

Save \$22.50 off List Price  
Bolex 8 mm Movie Outfit  
List \$172 (when bought separately)  
\$149.50

It is alleged that the \$172 claimed "list price" was not, in fact, the price at which the Bolex outfit usually and customarily was sold at retail in respondents' trade areas and that, consequently, the representation that there would be a saving of \$22.50 off the "list price" was deceptive. This conclusion is based on the allegation that, by using the word "list", Peerless represented that the price so designated was the usual and customary price of the article at retail in its trade area.

The next advertisement cited was:

Revere Automatic 8 mm Movie Camera  
\* \* \* \* \*  
Comparable List \$89.50 Special \$49.95

Upon the same reasoning, and referring to the figure of "\$89.50", which had been designated by Peerless as "Comparable List", the complaint charged that it had deceived prospective customers because, in fact, the Revere Automatic 8 mm Movie Camera was not comparable to cameras sold in its trade area at \$89.50.

The third advertisement cited in the complaint was:

Bonus Tag Item  
Imported 35 mm  
Canon L-I  
Original List \$379.50—\$119.95

As before, it was claimed, for the same reasons, that the represented "Original List \$379.50" was a deceptive representation as to the usual and customary price at which the Canon L-1 was sold in respondents' trade area. It was alleged, in addition, as to this Canon L-1 advertisement, that it constituted a false representation that the camera being sold for \$119.95 was equipped with a Canon lens when, in fact, it was not so equipped, but was equipped with an inferior lens.

These three advertisements were the only ones cited in the complaint. Commission counsel offered in evidence and there were received a number of advertisements which had been placed in the New York Times and in the New York Post, both well known to have large circulation in New York and elsewhere (CX 3-10, incl.)