

Complaint

64 F.T.C.

such planned common course of action, understanding, agreement, combination or conspiracy is selling bread in interstate commerce in competition with bread sold by any one or more of the other parties thereto, to do or perform any of the following things:

- (1) Establish, fix or maintain prices, terms or conditions of sale of bread.
- (2) Adhere to any prices, terms or conditions of sale so fixed or maintained, or
- (3) Deter or attempt to deter any competitor from exercising his individual judgment as to prices, terms or conditions of sale of bread.

*It is further ordered*, That the complaint herein be, and the same hereby is, dismissed as to Arthur H. LaLime, deceased.

*It is further ordered*, That respondents 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 set forth herein.

Commissioner Anderson concurring in the result; Commissioner Elman dissenting; and Commissioner Reilly not participating for the reason that he did not hear oral argument.

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IN THE MATTER OF

WALTHAM WATCH COMPANY ET AL.

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

*Docket 8396. Complaint, May 15, 1961—Decision, Feb. 28, 1964*

Order requiring Chicago importers of watches, watch movements, cases and attachments which they assembled, to cease using inflated prices, in advertising and preticketing, as regular retail prices, misrepresenting, in advertising and labeling, the number of friction bearing jewels, the extent of their guarantee, and that their watches are manufactured in the United States by the well-known Waltham Watch Co. of Mass. by using such terms as "Waltham Premier, a famous name, part of the American scene since 1850," and the name "Waltham" in advertising and labeling to describe their watches.

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 Waltham Watch Company, a corporation, and Harry Aronson, Ben Cole, and Morris Draft, 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 Waltham Watch Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 231 South Jefferson Street, Chicago, Illinois.

During a part of the time referred to hereinafter the individual respondents Harry Aronson, Ben Cole and Morris Draft were officers of Hallmark, Inc., a corporation organized under the laws of the State of Illinois, which had its office and principal place of business at 231 South Jefferson Street, Chicago, Illinois. Hallmark, Inc., has been merged into the respondent corporation, Waltham Watch Company.

The aforesaid individual respondents are officers of the corporate respondent and they formulate, direct and control the acts and practices of the respondent corporation, and they formulated, directed and controlled the acts and practices of Hallmark, Inc., prior to its merger into the respondent corporation, Waltham Watch Company. The individual respondents' office and principal place of business is the same as that of the corporate respondent.

PAR. 2. In the course and conduct of their business respondents import watches, watch movements, cases and attachments, assemble and sell them. Respondents cause their said products, when sold, to be transported from the State of Illinois and elsewhere, to purchasers thereof located in various other states of the United States and in the District of Columbia.

Respondents have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents 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, catalog insert sheets, 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 prices are in excess of the prices at which said watches are usually and customarily sold at retail and are fictitious retail prices.

PAR. 4. Respondents in their advertising, catalogs, brochures and other promotional material represent that their products are guaranteed by the use of such terms as "guaranteed", "fully guaranteed" or "lifetime guaranteed", and other terms and expressions of which these are typical. Respondents also represent in guarantee certificates that their products will be serviced upon the 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 that set out 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. 5. The respondents purchase 17-jewel watch movements made in, and imported from, Switzerland, add a device containing 4 or 8 synthetic jewels, and affix attachments to the watches and case the movements. The watches are then represented, advertised, offered for sale and sold by respondents as "21" and "25" jewel watches, to retailers, catalog houses and wholesale distributors.

PAR. 6. By means of the statements that the said watches were 21- and 25-jewel watches, respondents represented that said watches contained 21 and 25 jewels, each of which serves a mechanical purpose as a frictional bearing, and that, each jewel provides a mechanical contact at a point of wear. In fact, the additional jewels in the device added by the respondents are not functional and these watches are not 21- and 25-jewel watches as represented and advertised.

PAR. 7. The respondents have advertised their said watches in newspapers, jewelers' trade magazines, nationally distributed magazines, catalogs, catalog insert sheets and circulars, and on labels and packages. Among and typical, but not all inclusive, of the statements appearing in such advertising material have been the following:

Waltham Watches—Timing the Nation since 1850.

Waltham Premier, a famous name, part of the American scene since 1850.

By means of such statements, respondents have represented, directly or by implication, that their said watches are manufactured in the United States by the old and well-known Waltham Watch Company of Waltham, Massachusetts. Such statements are false, misleading and deceptive. In truth and in fact, said watches are not

manufactured in the United States by the old and well-known Waltham Watch Company of Waltham, Massachusetts.

PAR. 8. By the acts and practices aforesaid respondents have placed in the hands of retailers and others, a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the regular and usual retail prices, the character of the guarantee, the number of friction bearing jewels and the origin and manufacturers of respondents' watches.

PAR. 9. Respondents, in the course and conduct of the sale of their watches, have been and are in substantial competition in commerce with other corporations, firms and individuals engaged in the manufacture, sale and distribution of watches.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to induce members of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and into the purchase of a substantial number of their watches as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, have been 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. Harry E. Middleton, Jr.*, of Washington, D.C., for the Commission.

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

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

OCTOBER 18, 1962

In a complaint issued May 15, 1961, the Federal Trade Commission charged Waltham Watch Company, a Delaware corporation, and its officers, Harry Aronson, Ben Cole and Morris Draft, both individually and as officers, with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. The acts complained of were related to the sale and distribution

of watches by the respondents. In general, they were charged with deceptive pricing activities, false representations as to guarantee and jewel content of watches and deceptive use of the Waltham name.

In their answer, the respondents denied generally the allegations of the complaint. They asserted also that they were defending prior Commission proceedings involving identical issues and thus were subjected to a multiplicity of law suits and harassment.

Waltham Watch Company actually was a respondent in two other cases then pending before the Commission.

In one, Docket No. 6914, it was joined with others not parties to this proceeding. Aronson, Cole and Draft were not respondents there. That case was concerned with alleged deceptive practices involving the jewel content of watches and the use of the name "Waltham". It was decided adversely to the respondents there by the Commission on October 16, 1962 [61 F.T.C. 1027].

The other case, Docket No. 7997, was brought against Waltham and Aronson. Other respondents in that case are not respondents here. Ben Cole and Morris Draft, respondents in this case, were not charged there. It was concerned with, among other things, the alleged deceptive use of the name "Waltham" in the sale of clocks. It was decided adversely to the respondents there by the Commission on June 15, 1962 [60 F.T.C. 1692].

Waltham's present officers, the individual respondents here, are admittedly responsible for its most recent business practices. Even though the use of the name "Waltham" was involved in the other cases and jewel content was involved in one of them, this case need not be regarded as a repetition of the prior litigation nor as an unwarranted harassment. Since the individual respondents constitute new management of Waltham and the effect of the allegations was that they were persisting as such in Waltham's prior practices, some of which had been litigated in the other cases, it seems proper that Waltham be joined as a respondent with them. We are here concerned with their conduct in their administration of Waltham's activities. (The fact that Aronson also was a party in Docket No. 7997, involving, among other things, the Waltham name, does not alter this. That was the case concerned with clocks as distinguished from watches.)

Moreover, there is more to this proceeding than jewel count and use of the Waltham name. As stated above, this proceeding is concerned also with alleged deceptive price practices and claimed false guarantees. These last were not involved in the prior cases as far as Waltham and Aronson were concerned.

Together with their submission of proposed findings of fact, conclusions of law and order, respondents have filed a formal "Motion to Dismiss Paragraphs 5, 6, 7 and 8 (in part)" of the complaint. While the Hearing Examiner has some doubt whether he could consider a motion such as this, which attacks the Commission's exercise of its discretion to issue the complaint in this proceeding while the two prior proceedings were pending, in view of the outcome of those proceedings and the action to be taken by the Hearing Examiner in this proceeding, he concludes that respondents' motion need not be decided. To the extent that Waltham Watch Company already is subject to an order of this Commission requiring it to cease and desist from practices related to jewel count and use of the Waltham name, the Hearing Examiner will not duplicate such order or orders by any action here. He believes that one Commission order directing that a party cease and desist from a particular action is sufficient and it is not necessary that an additional order issue providing the same remedy. In a sense, this appears to be the relief sought by respondents in, and the only purpose of, their formal motion.

The Pretrial Order, the Hearing Examiner's certification to the Commission and the Commission's approval of the Hearing Examiner's recommendation that he be permitted to hear this proceeding first in Chicago, then in Milwaukee, then in Minneapolis, and finally, again in Chicago, all were predicated on the expectation that the issues herein would be litigated bitterly and that hurried trips would be made from city to city in order expeditiously to complete the proceeding. However, on the day that the Hearing Examiner left Washington to commence the hearing, he received the decision and opinion of the Commission dated July 20, 1962, in the case bearing Docket No. 6914. These became available to all counsel on the morning set for the opening of the hearing. That decision clearly and definitely ruled that Waltham Watch Company was to cease and desist misrepresenting the jewel content of watches and using the name "Waltham" without clearly stating the country of origin of its watches or using the Waltham name in an historical sense for the purpose of describing its watches. In addition, Commissioner Philip Elman in the opinion stated,

Respondents should be prohibited from using the term "American", or any reference to "Waltham", in any manner or context suggesting that the watches which they sell under the Waltham name are made in the United States. To provide effective relief these provisions are necessary at least until such time as the harmful effects of respondents' deceptive advertising have been erased. If and when this has been accomplished, the Commission will entertain any

