

Complaint

60 F.T.C.

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

WALTHAM WATCH COMPANY ET AL.

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

Docket 7997. Complaint, June 24, 1960—Decision, June 15, 1962

Order requiring a Chicago importer of clocks from West Germany—actually a successor by a “spin-off” in reorganization of the original Waltham Watch Company of Massachusetts to certain rights to use the “Waltham” trade name—and the sole distributor of the clocks, to cease using the word “Waltham” without clear notice that their products were not manufactured by the well-known Waltham Watch Co. of Waltham, Mass. (presently in business under another name); and requiring said distributor to cease making numerous false claims in connection with its franchise distributor plan whereby it sold “Waltham” clocks, together with display cases, to operators for resale to the public, including claims of exaggerated profits and misrepresentations of refund and return policies and guarantees, as in the order below more specifically set forth.

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 and Lawrence Aronson, individually and as officers of said corporation, and David Singer, an individual, trading as Time Industries, and Muriel Singer, indi-

* As amended July 10, 1961.

vidually, 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 under the laws of the State of Delaware, with its office and principal place of business located at 231 South Jefferson Street, in the city of Chicago, State of Illinois.

Respondents Harry Aronson and Lawrence Aronson are officers of said corporate respondent. They formulate, direct and control the practices of said corporation. Their address is the same as that of the corporate respondent.

Respondent David Singer is an individual trading and doing business as Time Industries, with his office and principal place of business located at 170 West 74th Street, in the city of New York, State of New York.

Respondent Muriel Singer is an individual and acts as General Manager of Time Industries with her office and principal place of business the same as that of respondent David Singer.

Respondents David Singer and Muriel Singer cooperate in the performance of the acts and practices of Time Industries, hereinafter set forth.

PAR. 2. Respondent Waltham Watch Company, prior to the spring of 1959, imported clocks from West Germany into the United States and sold said clocks to respondent David Singer: since early 1959 respondent Singer has imported the clocks bearing the Waltham name and has paid the Waltham Watch Company a royalty on all such clocks imported.

PAR. 3. Respondent David Singer, trading as Time Industries, was, and is, the sole distributor of clocks imported into the United States by Waltham Watch Company and of clocks imported directly by said David Singer, which bear the name "Waltham", under a license agreement with Waltham Watch Company, and he is now, and for some time last past has been, engaged in the sale and distribution of said clocks to distributors for resale to the public. Said clocks are sold with display cases for use by the purchasers in various locations to display the clocks for sale to the public.

In the course and conduct of its business, respondent Waltham Watch Company, for some time last past has imported said clocks from West Germany into the United States and respondent David Singer has caused said clocks, when sold, to be shipped from the State of New York to the purchasers located in various states of the United

Complaint

60 F.T.C.

States. Both of said respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said clocks, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have been, and are now, in direct and substantial competition, in commerce, with corporations, firms and individuals in the sale of clocks.

PAR. 5. Respondent David Singer, with the cooperation of respondent Muriel Singer, inserts advertisements of their products in newspapers and periodicals. Persons responding to said advertisements are contacted by respondents or their agents or representatives. Said respondents or their agents or representatives then display to the prospective purchasers a variety of promotional literature and make various oral representations concerning said articles of merchandise in an effort to induce the prospective purchasers to buy said articles of merchandise. Among and typical, but not all inclusive, of the statements made in said advertisements and in circulars and other printed matter distributed to prospective purchasers are the following:

FAMOUS 109-YEAR FIRM
ANNOUNCES NEW EXPANSION FRANCHISE PLAN

World Renowned
WALTHAM CLOCKS

Millions buy this great brand.

You know WALTHAM is one of the four great names in watchmaking. Your grandfather did, too. WALTHAM, a great American name, backed by old world craftsmanship, for the design and styling of its clocks. WALTHAM has spent tens of millions of dollars conditioning hundreds of millions of people, over the years, to accept the WALTHAM guaranteed line of clocks.

When you become the WALTHAM Franchise Man in your town you've got a world famous name working for you, day and night, seven days a week.

WALTHAM WATCH COMPANY

invites you to participate in one of the most gigantic expansion programs ever launched . . . to share the steadily growing profits as this world renowned firm goes all out to increase distribution of its nationally advertised products.

WALTHAM CLOCKS
Product of WALTHAM WATCH COMPANY since 1850

For the first time in the history of direct selling a famous 150-year-old company with established brand products offers you this opportunity.

YOU DO NO SELLING

Our own experienced Placement Expert contacts leading jewelry, drug, variety, food, hardware, appliance and department stores in your area.

1692

Complaint

All the selling is done FOR YOU by our Placement Expert and Area Director in your territory.

. . . all you do is service the WALTHAM CLOCK DISPLAY Route which we have already established for you.

Absolutely no selling. We do all the work.

TO MEN INTERESTED IN LIFETIME SECURITY ASSURING EXTRA INCOME . . . *WITHOUT SELLING*

We contact leading jewelry, drug, variety, food, hardware, appliance and department stores in your area and place the handsome WALTHAM CLOCK in the most profitable locations.

You never have to place a display—you do absolutely NO SELLING.

There is no selling involved. Our experienced location directors train you fully, provide you with all the help and information you need to get started at once—so YOUR CASH INCOME STARTS IMMEDIATELY.

1959's soundest BE-YOUR-OWN-BOSS FRANCHISE.

This is the only certified money making proposition in this magazine or any other magazine which requires no selling. All you do is collect profits.

Earn 25%, 50% and even 100% on your money without interfering with your regular time of work. This extra profit will make you a rich man.

WE PROTECT YOUR MODEST INVESTMENT

Further, should you decide to retire, or for any reason whatsoever, decide to sell your valuable WALTHAM CLOCK DISPLAY FRANCHISE, you are fully protected by our combined REPURCHASE OF INVENTORY AND BONUS PLAN. In fact many times we get urgent requests from opportunity seekers begging us to buy franchises. Your WALTHAM CLOCK FRANCHISE gets more valuable every day.

Because of our Guaranteed Investment Plan, the distributor can earn the equivalent of his investment through our re-order plan, therefore we feel that it is at our discretion to exercise the approval or disapproval of an applicant. This can only be done through a personal interview with an applicant by an account executive of our company. If you are accepted you may be assured that you will be a member of a very successful field of merchandising with an excellent return derived from the sale of Waltham clocks.

If you wish to reserve your territory while you investigate our proposition further a deposit of \$50.00 will hold it * * *

Guaranteed unconditionally.

PAR. 6. By and through the use of the statements in the aforesaid advertisements and others of similar import, not specifically set out herein, respondents David Singer, trading as Time Industries, and Muriel Singer, represent and have represented, directly or by implication, that:

1. Their business is a part of or connected with the old and well-known Waltham Watch Company, of Waltham, Massachusetts.
2. The clocks sold by them are manufactured by the old and well-known Waltham Watch Company, of Waltham, Massachusetts.
3. Their display cases will be located in leading drug stores, chain stores, markets and other profitable locations by respondents' repre-

sentatives, and that the purchasers themselves never have to locate these cases.

4. That no selling is required on the part of the purchaser.
5. The initial investment of the purchaser of their products is protected and guaranteed and purchasers will earn from 25% to 100% on their investments.
6. Respondents will sell their products only to a limited number of selected and qualified persons.
7. Respondents guarantee that their proposition is money making.
8. Their clocks are unconditionally guaranteed.
9. Respondents will reserve territory in which the purchasers of their products may operate.
10. Their representatives who will call upon prospective customers are account executives or executives of respondent Time Industries.
11. Respondents will train purchasers of their products in the operation of their businesses.

PAR. 7. Respondent David Singer, trading as Time Industries, and respondent Muriel Singer, and salesmen and representatives employed by them, in the course of their solicitation for the sale of said clocks have repeated the statements set out in paragraph 5 and have made additional oral statements to prospective purchasers of their said products, of which the following are typical:

1. That respondents' salesmen are executives, representatives or long time employees of the old and well-known Waltham Watch Company, of Waltham, Massachusetts.
2. That purchasers of respondents' products are granted exclusive territories within which to operate their businesses.
3. That merchandise unsold at the end of one year from date of purchase may be returned to respondents and full refund of the purchase price will be made.
4. That profits of \$30.00, \$50.00, \$80.00 or \$100.00 a week would be assured purchasers of respondents' products and that the average weekly profit of the purchasers of respondents' products is \$85.00.
5. That respondents' employees will relocate display cases if original locations are not profitable.
6. That respondents' salesmen and their wives have made large sums of money selling clocks at retail through respondents' sales plan.
7. That two to four clocks per week will be sold from each display case and that the national average is three to four clocks weekly.
8. Purchasers of respondents' products will be able to liquidate their investments within a short time through their profits, with no risk of losing their money.

PAR. 8. The aforesaid statements and representations made in the advertising matter and orally by respondents David Singer, trading as Time Industries, and Muriel Singer, and their salesmen were, and are, false, misleading and deceptive. In truth and in fact:

1. Respondents' business is not a part of or connected in any way with the old and well-known Waltham Watch Company, of Waltham, Massachusetts.

2. The Waltham clocks sold by respondents are not manufactured by the old and well-known Waltham Watch Company, of Waltham, Massachusetts.

3. The display cases are not located in leading drug stores, chain stores, markets and other profitable locations but, on the contrary, are placed in any locations which respondents' representatives can secure, and in many cases must be relocated by the purchasers if sales are to be expected.

4. Selling is required on the part of purchasers in that in relocating display cases it is necessary to sell the merchants and others to the extent that they will permit the display cases to be placed in their establishments.

5. The initial investment of purchasers is neither protected nor guaranteed and many purchasers do not earn 25% to 100% on their investments.

6. Respondents do not sell their products to a limited number of selected and qualified persons. On the contrary and as a general rule, said products will be sold to any person who will contract to purchase and has the necessary funds to pay the purchase price.

7. Respondents do not guarantee that their proposition is money making.

8. Respondents' clocks are not unconditionally guaranteed. On the contrary, the guarantee extends for only ninety days and in case repairs are necessary a service charge of \$1.25 is made, neither of which said conditions are disclosed.

9. Respondents do not reserve territory in which the purchasers of their products may operate.

10. Respondents' representatives are not account executives or executives of Time Industries, but are only salesmen.

11. Respondents provide little or no training in the operation of the business to the purchasers of their products.

12. None of respondents' salesmen are executives, representatives or employees of the old and well-known Waltham Watch Company, of Waltham, Massachusetts, nor do they have any connection with said company.

13. Purchasers of respondents' products are not granted exclusive territories within which to operate their businesses.

14. The full refund of the purchase price of unsold merchandise which is returned to respondents at the end of a year from date of purchase is not made at that time or at any other time.

15. Profits of from \$30.00 to \$100.00 a week are seldom if ever made by purchasers of respondents' products and \$85.00 is greatly in excess of the average weekly profit of the purchasers of respondents' products.

16. Respondents' employees do not relocate display cases under any circumstances.

17. Neither respondents' salesmen nor their wives engage in the sale of respondents' products at retail through respondents' plan.

18. In a great majority of cases, two to four clocks are not sold weekly from each display case and the national average of such sales is much less than three to four clocks weekly.

19. Many purchasers of respondents' products do not liquidate their investments through profits in a short time or in the period of time commensurate with the representations respecting earnings, and many persons lose substantial portions of their investments.

PAR. 9. The name "Waltham" has long been known to the public and time-keeping products bearing this name have been and are held in high esteem by the purchasing public. The name "Waltham" is clearly and distinctly printed or stamped on the dials or faces of the clocks imported by respondent Waltham Watch Company and sold to the public by purchasers from Time Industries.

The use by respondent of the name "Waltham" in connection with said clocks, unless accompanied by a clear disclosure that said clocks are made in West Germany and are not the product of Waltham Watch Company of Waltham, Massachusetts, has the tendency and capacity to lead the public into the erroneous and mistaken belief that said clocks are the product of Waltham Watch Company of Waltham, Massachusetts.

Respondent Waltham Watch Company thus places means and instrumentalities in the hands of respondents David Singer, trading as Time Industries, and Muriel Singer, whereby distributors and the public may be misled as to the origin and manufacturer of said clocks.

PAR. 10. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and the failure of respondents to disclose that

their products are not those of the old and well-known Waltham Watch Company, all have the tendency and capacity to cause substantial number of the purchasing public to purchase substantial quantities of respondents' products. As a result thereof, trade has been, and is now being, unfairly diverted to respondents from their competitors and injury has been, and is now being, done to competition in commerce.

PAR. 11. The acts and practices, 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 and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John W. Brookfield, Jr., supporting the complaint.

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

INITIAL DECISION * BY WALTER K. BENNETT, HEARING EXAMINER

This proceeding was brought to prevent misrepresentation in the sale of West German-made clocks in commerce. One of the alleged misrepresentations involves the use of the well-known trade name Waltham.

The complaint, issued June 24, 1960, sets forth the type of advertising and other representations made by respondents David and Muriel Singer (the former trading as Time Industries), and charges that they were false and constituted unfair methods of competition and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act. Waltham Watch Company, and its officers, are charged with placing the means of misrepresentation in the hands of the Singers.

By answer, respondents David and Muriel Singer denied that the representations were false and misleading but admitted that they were engaged in commerce and that there is competition. Respondents Waltham Watch Company, Harry Aronson, and Lawrence Aronson (officers of Waltham), in their answer, deny either directly or on information and belief, all of the material allegations of the complaint except purely formal allegations.

At a pre-hearing conference, which has been incorporated in the public record, counsel agreed to a number of pre-trial procedures. These procedures materially shortened the time for the hearings. Counsel for both parties are to be commended for the manner in which these procedures were agreed to and carried out. Among other matters, almost all of the advertising copy was admitted. Contractual

*As corrected by hearing examiner's orders of December 11, 1961 and April 20, 1962.

arrangements between Waltham and Singer and also between Singer and Time Industries' distributors and salesmen were admitted. In addition, an arrangement was made to disclose the names of witnesses to the opposite party sufficiently in advance of the hearings at which they were to be called to permit opposing counsel to prepare cross-examination. Counsel agreed not to make contact with witnesses (other than respondents) called by opposing party until after they had been discharged from subpoena. Issues of commerce were also largely disposed of during pre-trial. It was conceded that Time Industries (which will hereafter sometimes be used interchangeably with David Singer) is engaged in commerce, and it is clear that Waltham Watch Company is also so engaged. (This concern will sometimes be described as Waltham.)

The written advertising so authenticated when read as a whole generally supports the allegations of the complaint.

Ten hearings were held at the instance of the Commission in New York, New York, Washington, D.C., Mobile, Alabama, and Atlanta, Georgia, commencing January 9, 1961, and concluding March 24, 1961. After considerable interval four hearings were held on behalf of respondents in Washington, D.C., and Chicago, Illinois, commencing April 28, 1961, and concluding August 24, 1961. On September 19, 1961, a hearing was held to permit counsel for respondent to record proof described in a proffer of proof which had been ruled inadmissible. No testimony was taken at that hearing, but counsel's time to file proposed findings and conclusions was extended to October 9, 1961.

Two requests for stays of proceedings were made by respondent.

The first request was made by motion filed July 3, 1961, to stay proceedings, pending an appeal from an order of the hearing examiner refusing to consolidate this proceeding with others pending against Waltham. The order was made orally at a hearing held June 30, 1961, and later formalized by order dated July 5, 1961. The Commission denied the stay by order dated July 10, 1961, and no further action was taken to appeal from the order on the motion. The second request was made by motion filed September 28, 1961, to stay all proceedings and to take an interlocutory appeal from the hearing examiner's order refusing to grant continuance of the hearing on September 19, 1961. The Commission denied permission to file an interlocutory appeal by order issued October 12, 1961.

The complaint was dismissed as against Lawrence Aronson at the conclusion of the Commission's case, there being no evidence to link him with any of the activities charged and affirmative testimony that

1692

Initial Decision

he had no connection with any of them. (1056)¹ The complaint was also amended to conform to the proof which varied in certain unimportant particulars relating to the person responsible for importation of clocks. (1055) Decision was reserved on a motion to dismiss as to other respondents which was made at the conclusion of the Commission's case. (1061) It is now denied. Proposed Findings of Fact and Conclusions of Law were submitted on October 9, 1961. Argument thereon was held October 23, 1961, at respondents' request and all have been carefully considered.

To the extent deemed necessary to this decision, the Findings of Fact and Conclusions of Law incorporated herein in substance or in terms are accepted. Those not so incorporated are rejected as either immaterial or erroneous.

Upon consideration of the entire record herein, the hearing examiner makes the following Findings of Fact and Conclusions therefrom and Order.

FINDINGS OF FACT

As a frame of reference for the alleged false representations, we consider first the relationship among respondents and the character of the business transacted.

Identity and Relationship Among Defendants

Respondent Waltham Watch Company (Waltham), is a Delaware corporation having its principal place of business at 231 So. Jefferson Street, Chicago, Illinois, which was formed in July 1957, after Waltham Watch Company of Massachusetts ceased the manufacture of watches and clocks. The owners of Waltham, during the reorganization, became entitled to the Waltham name for use with watches and clocks. From 1957 to 1959, Waltham imported clocks from West Germany bearing the Waltham name; thereafter, Singer did the importing. The Aronsons are officers of that corporation. Waltham licensed (CX-33A) respondent Singer (Time Industries) to utilize the name Waltham in the sale of clocks for a royalty fee.

Respondent Time Industries is an unincorporated business located at 170 West 74th Street, New York, New York, which was formed to merchandise "Waltham" clocks. Respondents David and Muriel Singer are man and wife. David Singer is the owner of Time Industries, while Muriel acts for him and signs much of the correspondence emanating from Time Industries as "Office and Field Manager."

The Merchandising Operation

Singer undertook a relatively new method of merchandising. Instead of using professional wholesalers to make contact with the retail

¹ References are to typewritten transcript pages unless preceded by CX or RX which refer respectively to Commission's and Respondents' exhibits.

trade, Time Industries advertised in various periodicals and newspapers for persons who would become "franchised distributors." Those who answered the advertisement were visited by a salesman from Time Industries and after some discussion were asked to sign a contract and to make a down payment. Thereafter, when full payment under the contract was made by the distributor, Time Industries placed display cases containing clocks in selected retail stores and secured an agreement from the distributor that the locations were satisfactory. The stores selected executed a consignment agreement whereby the clocks remained the property of the distributor until sold by the store. The distributor, under his contract, "serviced" the "route" by collecting from the retailer the purchase price of the clocks which the retailer sold less $33\frac{1}{3}$ percent, and by replacing the clocks sold by the retail store in display cases which were provided for the retailers. This necessitated maintaining an inventory or reordering clocks. A bonus of clocks was provided for distributors who reordered over \$500 wholesale value of clocks in a year, and the clocks were guaranteed originally by Waltham but later by Time Industries.

The Representations

As charged in the complaint, Time Industries (i.e., David Singer assisted by his wife Muriel) was responsible for the issuance of false representations both by means of advertisements and through salesmen and representatives. Waltham and its officers were charged with aiding the Singers by placing in their hands the instrumentality to commit the fraud on the public, i.e., importing until 1959 the clocks with the Waltham imprint and then authorizing the Singers to import clocks with the Waltham imprint and to represent themselves as selling Waltham clocks.

Many of the false representations were made both in the advertising for which the Singers admittedly bear full responsibility and also by various salesmen for whose statements the Singers sought to avoid responsibility. The scheme to avoid responsibility was the execution of a contract making the salesmen "independent contractors." The contract provides that salesmen should not obligate Singer "by representation, promise, act or in any manner except as herein specifically authorized." However, the Singers clothed their salesmen with apparent authority by advertising—"for details of our dynamic plan a representative of our firm will contact you and explain in detail all necessary information,"—(CX-64) and the contract was not disclosed to the distributors who bought the franchises. Hence, the unilateral action within Time Industries, coupled with the acceptance

1692

Initial Decision

of the benefits of the salesmen's efforts, completely thwarted the Singers' attempt to avoid responsibility. Moreover, the representations by the salesmen closely meshed with the advertising material supplied by Time Industries so as to create in the minds of the victims a single consistent rosy picture of prospects for profit from the sale of a well-known product without effort, and, further to indicate that the operation was guaranteed by a well-known manufacturer. These representations were not true and some of them could not have been realized. Typical of statements made in the written advertisements are the following:

FAMOUS 109-YEAR FIRM
ANNOUNCES NEW EXPANSION FRANCHISE PLAN

World Renowned
WALTHAM CLOCKS

Millions buy this great brand (CX-6)

You know WALTHAM is one of the four great names in watchmaking. Your grandfather did, too. WALTHAM, a great American name, backed by old world craftsmanship, for the design and styling of its clocks. WALTHAM has spent tens of millions of dollars *conditioning* hundreds of millions of people, over the years, to accept the WALTHAM guaranteed line of clocks. (CX-6)

When you become the WALTHAM Franchise Man in your town you've got a world famous name working for you, day and night, seven days a week.

(CX-6)

WALTHAM WATCH COMPANY

invites you to participate in one of the most gigantic expansion programs ever launched . . . to share the steadily growing profits as this world renowned firm goes all out to increase distribution of its nationally advertised products in local areas throughout the country. (CX-2)

WALTHAM CLOCKS

Product of WALTHAM WATCH COMPANY since 1850 (CX-2)

For the first time in the history of direct selling a famous 150-year-old company with established national brand products offers you this opportunity.

(CX-21)

YOU DO NO SELLING

Our own experienced Placement Expert contacts leading jewelry, drug, variety, food, hardware, appliance and department stores in your area. (CX-6)

All the selling is done FOR YOU by our Placement Expert and Area Director in your territory. (CX-6)

. . . all you do is service the WALTHAM CLOCK DISPLAY Route which we have already established for you. (CX-6)

Absolutely no selling. We do all the work. (CX-21)

TO MEN INTERESTED IN LIFETIME SECURITY ASSURING EXTRA INCOME . . . *WITHOUT SELLING* (CX-6)

We contact leading jewelry, drug, variety, food, hardware, appliance and department stores in your area and place THIS HANDSOME WALTHAM CLOCK DISPLAY (See illus.) in the most profitable locations. (CX12)

Initial Decision

60 F.T.C.

You never have to place a display—you do absolutely NO SELLING (CX-2)
 There's no selling involved. Our experienced location directors train you fully, provide you with all the help and information you need to get started at once—so YOUR CASH INCOME STARTS IMMEDIATELY. (CX-2)

1959's soundest BE-YOUR-OWN-BOSS FRANCHISE (CX-2)

This is the only certified money making proposition in this magazine or any other magazine which requires no selling. All you do is collect profits. (CX-2)

Earn 25%, 50% and even 100% on your money without interfering with your regular line of work. This extra profit without work will make you a rich man. (CX-2)

WE PROTECT YOUR MODEST INVESTMENT (CX-6)

Further, should you decide to retire, or for any reason whatsoever, decide to sell your valuable WALTHAM CLOCK DISPLAY FRANCHISE, you are fully protected by our combined REPURCHASE OF INVENTORY AND BONUS PLAN. In fact many times we get urgent requests from opportunity seekers begging us to buy franchises. Your WALTHAM CLOCK FRANCHISE *gets more valuable everyday.* (CX-6)

Applicants who can qualify are being appointed as Local Distributors. Must be responsible, permanent resident, have use of a car, devote at least 6 hours weekly to this dynamic merchandising plan. References and a minimum investment of \$1190.00 to \$4780.00 cash available immediately which is protected by our Combined Bonus & Repurchase Plan. Applicants will be accepted after a local personal interview with a company executive. Write today giving name, address, phone number and background. Kindly do not apply unless you can meet all requirements. (CX-17)²

If you wish to reserve your territory while you investigate our proposition further a deposit of \$50.00 will hold it * * * (CX-1b)

Unconditionally Guaranteed. (CX-14)

From reading of the advertisements³ as well as from the testimony of the purchasers of the franchises, it is clear that respondents have represented directly or by implication that:

1. Their business is a part of or connected with the old and well-known Waltham Watch Company, of Waltham, Massachusetts.
2. The clocks sold by them are manufactured by the old and well-known Waltham Watch Company, of Waltham, Massachusetts.
3. Their display cases will be located in leading drug stores, chain stores, markets and other profitable locations by respondents' representatives, and that the purchasers themselves never have to locate these cases.

²The third from the last quotation in Paragraph Five of the Complaint was not contained in the advertising received in evidence. A similar representation is quoted from an advertisement in the June 29, 1959 issue of *Financial World* (CX-17).

³Advertisements in addition to those cited by Exhibit Number contained one or more representations in a similar vein. The following Exhibits have been examined for a cross-section of the advertising program: (CX-1a, 1b, CX-2, CX-4, CX-6, CX-7, CX-8, CX-9, CX-12, CX-13, CX-14, CX-15, CX-19, CX-21, CX-22, CX-24, CX-25a, b, CX-26, CX-50, CX-57, CX-59 and CX-64).

1692

Initial Decision

4. That no selling is required on the part of the purchaser.
5. The initial investment of the purchaser of their products is protected and guaranteed and purchasers will earn from 25% to 100% on their investments.
6. Respondents will sell their products only to a limited number of selected and qualified persons.
7. Respondents guarantee that their proposition is money making.
8. Their clocks are unconditionally guaranteed.
9. Respondents will reserve territory in which the purchasers of their products may operate.
10. Their representatives who call upon prospective customers are executives of respondent Time Industries.
11. Respondents will train purchasers of their products in the operation of their businesses.

So far as representations made by the salesmen are concerned, counsel supporting the complaint offered the testimony of a substantial number of persons who purchased or were approached to purchase franchises. These witnesses were an excellent cross-section geographically, covering the East Coast and the Gulf. They were also diverse in education, age, sex and previous experience. Their testimony disclosed in general the following pattern of activity. They were attracted by the advertising generally, by the name "Waltham", had made contact with Time Industries, and received a call or calls from a man who introduced himself as a Waltham representative, presenting a card (provided by Singer) certifying himself as associated with the clock division of Waltham, and, with Time Industries, an exclusive distributor.⁴ This salesman then repeated some or all of the repre-

⁴ CX-51 for example is a card set up as follows:

Manufacturers	PHONE Endicott 2 6981
Since 1850	6997
	6998
WALTHAM WATCH Co.	
CLOCK DIVISION	
	<i>Exclusive Distributors</i>
	Time Industries
	170 West 74th Street
	New York 23, N.Y.
Richard R. Weith	

There were several variations in the placement of the name on these salesmen's cards but the mention of "Waltham" was characteristic. Singer testified he had supplied cards but the Weith card was not one he identified. That card was, however, received without objection.

sentations contained in the advertising and, in addition, made it appear that he was selecting persons for franchises on behalf of the Waltham Watch Company of Massachusetts, that profits would be assured, that merchandise could be returned at the end of the year for a full refund, that Time Industries would relocate display cases if the original locations were not profitable, that a number of clocks would be sold from each display case each week, and the purchasers would be able to liquidate their investment within a short time and could not possibly lose any money. Some of the witnesses testified to specific profits which were minimums to be expected and also testified that the salesmen had said that they themselves and their wives had made large sums of money selling clocks through the plan proposed. In aid of these representations the Singers supplied their salesmen with colored photographs of the clocks to be sold and the display cases in which they were to be exhibited. These photographs showed the name "Waltham Clocks" at the top of the case, and, at the bottom, "Product of Waltham Watch Company Since 1850". However, the stamp, West Germany, the country of origin, was not reproduced so that it was readable with the naked eye, if it was visible at all. (CX-60) They also supplied order forms, calculations of profits and other sales aids. In some cases, the salesmen apparently concealed the country of origin; in other cases, they exhibited clocks which were stamped with the country of origin. According to the testimony, however, substantially all of them created an impression on the witnesses who testified that they were buying clocks made by the well-known Waltham Watch Company.

While some of the representations were not made in precisely the language in which the complaint is couched, the general purport of the representations was clearly established by the witnesses who heard the salesmen's sales talk, and each of the representations alleged was made to at least one and most to more than one of the witnesses.

The Falsity of the Representations

Taken as a whole, the representations in the advertising and those made by the salesmen which Singers supplied, were palpably false, misleading and deceptive. The scheme was clearly one to shift to the so-called franchised dealers the risk of loss if the retail stores in the locations where the clocks were displayed did not sell the clocks. This was done by collecting the cost of the clocks, the price of the display cases and the forms from the "franchised distributor" immediately; and then, letting him worry about whether or not the retailers would ever sell any clocks and thus, in part, reimburse him for his

original outlay. The Waltham name was invoked both as a guarantee of the good faith of the proposition and also as a guarantee of the quality of the goods to be sold. The profits promised and the sales predicted varied so greatly from actual known performance that the statements went far beyond permissible puffing and became actively fraudulent. Refunds, return policies, and guarantees were also not as represented. Proof was not offered as to the falsity of the representations concerning the earnings of the salesmen and their wives, but the inference is clear both from the character of the operation and the results obtained by the wide variety of the witnesses that the claims for profits made were preposterous. Respondents made no effort to establish the contrary. They called none of the salesmen whose statements were quoted by the Commission's witnesses and made no satisfactory showing of the earnings of the franchised dealers. They also offered no satisfactory explanation as to why they had not done so, although the burden of going forward was placed upon them by the establishment of a prima facie case by counsel supporting the complaint.

In ensuing paragraphs we set forth specific findings on the true facts established, followed by some details from the supporting evidence.

(1) Respondents' business is not a part of or connected in any way with the old and well-known Waltham Watch Company of Waltham, Massachusetts. It has a contract executed by a corporation which succeeded to some of the business.

Time Industries secured a license from Waltham Watch Company of Delaware to utilize the name Waltham in connection with the civilian clock business. Waltham Watch Company of Delaware was formed in 1957 to take over the name and good will of the civilian watch and clock business of Waltham Watch Company of Massachusetts, after the latter company had ceased the manufacture of clocks. The stockholders of the Massachusetts company received one share of stock of the Delaware company for each five shares of stock held in the Massachusetts company, and the latter company changed its name to Waltham Precision Instrument Company, Inc., and confined its activities to the manufacture of precision instruments largely for munitions. A description of the metamorphosis is found in a prospectus issued by Waltham which has been marked Commission Exhibit 72. This shows that as of the date of the filing in 1961, the Aronsons who had never been connected with Waltham of Massachusetts, except as purchasers or licensees, were the "parent" of respondent Waltham owning over sixty percent of its common stock. Thus, Time Industries is clearly not a part of the old and well-known Waltham Watch

Initial Decision

60 F.T.C.

Company of Massachusetts. It is, however, licensed to use the name Waltham in the clock business by the Delaware company which succeeded, as indicated above, to certain rights of the Massachusetts concern. Hence, it is connected in a very tenuous way. Time Industries, however, is neither a part of Waltham Watch Company nor are its salesmen representatives of that company, as for example their cards and the advertisements would indicate.

(2) The Waltham clocks sold by respondents are not manufactured by the old and well-known Waltham Watch Company of Waltham, Massachusetts.

Admittedly, neither Waltham of Massachusetts nor Waltham of Delaware manufactured the clocks sold by Time Industries. Both Mr. Singer and Mr. Aronson testified that the clocks are manufactured in West Germany and that the clocks are stamped "Made in West Germany." At one time, prior to February 1959, when a group of persons known as the "Axler Group" had control of the management of Waltham of Delaware, clocks were imported by that corporation and sold to Time Industries. When the Aronson group, however, took control, the arrangement was changed and Time Industries imported the clocks which it purchased directly from Blessing Werke and others in West Germany. At that point, Waltham exercises no control over the manufacture of the clocks. Originally, the Axler group guaranteed the performance of the clocks and maintained repair facilities. However, when the Aronson group took control of Waltham, this activity ceased and Time Industries repaired the clocks and issued guarantees. Accordingly, the representation that Waltham of Massachusetts is the manufacturer of the clocks, is palpably false. Yet, the reading of the advertisements as a whole and the reaction of many of the witnesses who bought a franchise to sell the clocks clearly demonstrates that Waltham of Massachusetts was the company which any reasonable person would believe was referred to in the representations. There was some evidence of a consumer preference for goods not made in West Germany in some areas in New York State. This was confirmed by a "survey" used by Time Industries which showed sixty-five percent of the persons interviewed preferred domestic to imported clocks. (CX-61c) There was also some indication that there was some preference against foreign-made goods in Atlanta, Georgia. It is clear, however, that viewed as a whole, the advertising materials supplied to the salesmen was misleading, in its omission of the fact that the clocks were of foreign origin, particularly in the light of the emphasis placed upon the ancient respectability of the Waltham name.

(3) The display cases are not located in leading drug stores, chain stores, markets and other profitable locations but, on the contrary, are placed in any locations which respondents' representatives can secure, and in many cases must be relocated by the purchasers if sales are to be expected.

The representations in the advertising clearly imply that profitable locations will be selected in leading drug stores, chain stores, markets and other profitable locations. Salesmen's representations went even further in describing the location man as "an expert" and, in some instances, assured the prospective distributor that surveys would be undertaken before locations were picked. Actual placement, however, was distinctly a hit-or-miss affair. Some of the locators were quite unfamiliar with the territory. This was particularly apparent in the Atlanta, Georgia, area. These locators often rushed the clocks into any store where they could find a storekeeper who was willing to house them. They normally appeared to be in a hurry and had neither the time nor the inclination to select good locations. Time Industries cared little because it had already received more than the full wholesale price before any clocks were placed on location, so that even if it had to redeem the clocks after a year had elapsed it would only do so at the wholesale price then prevailing. This redemption price was sometimes so much less than what the distributor had paid that one distributor testified he did not even bother to return the clocks but distributed them as Christmas presents to relatives. Several of the witnesses testified that the clocks had been rejected by storekeepers when they went around to service the route. When an effort was made to have the clocks relocated, in one instance, at least, Mrs. Singer told the dealer that he would have to relocate the clocks himself. This was a far cry from locating the clocks in profitable locations.

(4) Selling is required on the part of purchasers in that in relocating display cases, it is necessary to sell the merchants and others to the extent that they will permit the display cases to be placed in their establishments.

The testimony of many of the purchasers of franchises, which is particularly persuasive because of their disparate education and background, shows that they were relying on the representation that all selling would be done by the expert locators from Time Industries and that no selling on the part of the distributor would be required. The distributor witnesses detailed their experiences which demonstrated that these representations were completely false. In most cases, where the witnesses testified, the locators did such a poor job of placement of the display cases and clocks that the distributor was forced to

Initial Decision

60 F.T.C.

relocate. They detailed, at some length, their efforts to sell to other storekeepers the desirability of maintaining the display cases in their stores. Some failed utterly and completely withdrew their display cases because of the sales resistance met.

(5) The initial investment of purchasers is neither protected nor guaranteed and many purchasers do not earn 25% to 100% on their investments.

The advertising of Time Industries clearly made two points: (a) that earnings of 25% to 100% could be made without interfering with the distributor's regular work, and (b) that the repurchase of inventory and bonus plan protected the investment in the event the distributor wished to retire.

In fact, claims for earnings were greatly exaggerated. The distributor's mark-up amounted to much less than he was led to believe, and, rather than making money, many of the victims lost not only their time but a large share of the money which they had invested. There was a bonus plan which was applicable in cases where distributors re-ordered \$500 worth at wholesale of merchandise, and, so far as the evidence shows, this was carried out. This bonus plan, however, had nothing to do with the protection of the original investment.

The repurchase plan also was a source of disillusionment. The prospective distributors, when they paid in their investment of over \$1,000, were convinced by the sales talk and by the advertising that this would all be returned if they decided at the end of a year to return the merchandise. The contracts signed, however, made it very clear that they could only secure the wholesale price on the original clocks which were charged to them. They could not secure the price paid nor could they return the clocks which were subsequently ordered. The display cases which were supplied for the clocks could not be returned, and some of the salesmen admitted this. If the clocks did not sell in the stores in which Times Industries located them, the distributor could not expect to receive nearly the amount that he originally invested.

(6) Respondents do not sell their products to a limited number of selected and qualified persons. On the contrary, and as a general rule, said products will be sold to any person who will contract to purchase and has the necessary funds to pay the purchase price.

Time Industries' advertising, among other things, uses the term "franchises," provides for a payment of \$50 to "reserve a territory" and also indicates that it may disapprove applicants. These circumstances clearly implied that each franchise holder would be given an exclusive territory. In connection with the fiction that only a limited

number of persons would be selected, one of the salesmen even purported to use a tape recorder in interviewing a prospective franchise purchaser which he told the witness he would send back to New York to secure the approval of Time Industries to the selection of the particular franchised distributor. As a matter of fact, as David Singer testified, the salesman himself had authority to select the qualified persons and very few were ever turned down if they had the requisite money. Moreover, the number of distributors overlapping in New Haven, Connecticut, Augusta, Georgia, Alexandria, Virginia and Mobile, Alabama, and the super-saturation of locations create a very strong inference that there was no real selection at all. This inference is strengthened by the wide variety of persons who were granted franchises and by the fact that the salesmen or company executives, as they were euphoniously described in advertisement, were compensated on a straight commission basis. If there were to be any real selection, the method of compensation would seem to be entirely inappropriate. Hence, we conclude that franchises were sold indiscriminately to anyone who was willing to pay the purchase price and that the salesmen's glib remarks to the contrary were merely additional instances of misrepresentation.

(7) Respondents do not guarantee that their proposition is money making.

The advertising, read as a whole, creates the inference that Time Industries represents that the franchises will make money. The words, among others, "the only certified money making proposition", "protected investment" and "unconditionally guaranteed" would make the unwary believe that Time Industries assures or guarantees a profit; so also the words, "assuring extra income" and "your cash income starts immediately." In truth, there was no such guarantee. Substantially, all of the many witnesses called by the Commission testified that—far from making money—they lost money. They obtained no recourse except the very limited repayment of the wholesale price on return of the merchandise which came with the original order. Moreover, the franchise arrangement was such that the distributor did not even start making money until they reordered and sold substantial amounts of new merchandise. The sale of the initial stock did not even offset the cost of the franchise.

(8) Respondents' clocks are not unconditionally guaranteed. On the contrary, the guarantee extends for only ninety days and in case repairs are necessary a service charge of \$1.25 is made, neither of which conditions are disclosed.

Anyone reading the words, "Waltham guaranteed line of clocks" and the representation, "unconditionally guaranteed," might properly conclude that Waltham of Massachusetts offered an unconditional guarantee. Waltham of Massachusetts is presumably meant because of the reference to that famous 109-year-old firm. The fact, however, is that there was only a limited guarantee, and this guarantee was never made by Waltham of Massachusetts at all. For a time, until the Aronsons bought out the Axler interest of Waltham of Delaware, that firm offered a limited guarantee extending for ninety days and requiring a service charge. Thereafter, the guarantee was made by Time Industries, a sole proprietor with a reputation and resources scarcely comparable to Waltham Watch Company as one would have expected from the advertising.

As so limited, however, the guarantee was honored, and, moreover, a number of distributor witnesses testified that they were permitted to return defective clocks to Time Industries and secured replacements. Despite this fact, the guarantee given did not measure up to that advertised and was accordingly false and misleading.

(9) Respondents do not reserve territory in which the purchasers of their products may operate.

The use of the term "franchise" to many of the victims of this scheme meant granting exclusive territory. This was confirmed by the statement contained in the advertising, "If you wish to reserve your territory while you investigate our proposition further, a deposit of \$50 will hold it." When the distributor came to signing the contract, however, the printed form was explicit that the agreement was non-exclusive, although it had a misleading blank space to fill in territory which some distributors took for a grant of an exclusive territory. Despite this provision, which few of the distributors noticed—when it was noticed, the salesman assured the distributor that this term was merely to protect the company in the event the distributor became sick or failed to do a proper job.

In fact, the locators for Time Industries paid no attention whatever to the territories of the distributors and sometimes located displays in stores immediately adjacent to the stores where other displays had been located. This was particularly true of locations in Atlanta, Georgia, Mobile, Alabama, Alexandria, Virginia, and in New Haven, Connecticut.

(10) Respondents' representatives are not account executives or executives of Time Industries, but are only salesmen.

As part of the sales buildup, Time Industries' advertising implied that the selection of franchise distributors would be by company executives. David Singer admitted that they were merely salesmen

and that they were compensated by a straight commission, so that they did not even have a continuing interest in the success of a franchised dealer but were paid for the original placement and for nothing else. The use of the term "executive" in the circumstances was clearly misleading and additional bait to lure the unwary prospective distributor.

(11) Respondents provide little or no training in the operation of the business to the purchasers of their products.

In advertising, "Our experienced location directors train you fully," Time Industries suggested some kind of a training course. In practice, the location director gave no training whatever. Often, he insisted upon approaching the storekeepers who were to exhibit the clock displays on their counters out of the presence of the prospective distributor. He then asked the distributor to sign a statement that the locations were satisfactory, although in many cases the distributor had never even seen them.

In several of the cases where the location man permitted the distributor to accompany him, the prospective distributor showed the location man good locations. The latter provided no training of any kind.

The representations made in the advertising were frequently repeated by the salesman who approached the prospective distributor. In addition, there were representations made orally which did not appear in the advertising. We deal with these in ensuing paragraphs.

(12) None of the respondents' salesmen are executives, representatives or employees of the old and well-known Waltham Watch Company of Waltham, Massachusetts, nor do they have any connection with said company.

Witnesses who had been franchised dealers of Time Industries described in some detail how the salesmen approached them. Some of them used the cards⁵ which set forth prominently Waltham Watch Company. The salesmen, in glib fashion, suggested to the distributors that they could not go wrong dealing with an old established firm like Waltham, and a few specifically claimed connection with the Waltham Watch Company. In fact, none of the salesmen were ever employed by the Massachusetts company. Singer, in his testimony, admitted that only one of the salesmen had ever been a former employee of any Waltham company. This one had worked for the spun off Delaware company which was sixty percent owned by the Aronsons and not for the well-known Waltham company of Massachusetts.

⁵ See Footnote 4 supra for a form of card, p. 1705.

(13) Purchasers of respondents' products are not granted exclusive territories within which to operate their businesses.

We have already dealt with the written advertisement phase of this same type of representation. The salesmen varied somewhat in their approach. Some made promises of exclusive territories expressly. Others, when faced with the contract provisions of the franchise, explained that the provision was merely for the protection of the company in the event the distributor got sick or failed to do his job. There were a few cases where the territory was expressly set forth in the contract and adhered to, and there were also a few cases where the exclusivity was disavowed. The printed contract, although it had a space for description of a territory which appeared to reserve an area, made it clear in another paragraph that the respondents' sales talk was completely false, and, in practice, as we have heretofore pointed out, exclusive territory was not granted. Perhaps one of the reasons why the scheme was not profitable to the distributors was that so many stores in the same area were given clocks to sell that the storekeepers became disinterested in attempting to sell them.

(14) The full refund of the purchase price of unsold merchandise which is returned to respondents at the end of a year from date of purchase is not made at that time or at any other time.

The representations orally made by the salesmen who visited the witnesses sometimes expressly stated that all merchandise could be returned and that the witness would not lose a penny. Other salesmen made it clear that the display cases could not be returned. Most victims, however, were left in a state of confusion as to just what refund would be made. The contract in terms provided that only those portions of the original inventory which were held after the first year could be returned. Moreover, the full purchase price was not returned but only the wholesale price of the merchandise. Despite Singer's denial that the wholesale price had ever been changed, several of the witnesses indicated that there had been a reduction so that they did not receive nearly as much for the clocks which they returned as they had paid for them at the time of their original purchase. Even assuming that Singer is correct, the amount paid on the purchase of the franchise far exceeded the wholesale cost of the clocks so that the mere return of the clocks, in no instance, would provide for payment in full of the amount paid at the time of the purchase of the franchise.

(15) Profits of from \$30.00 to \$100.00 a week are seldom, if ever, made by purchasers of respondents' products and \$85.00 is greatly in

excess of the average weekly profit of the purchasers of respondents' products.

Salesmen appeared to vary their estimate of what the prospective distributor would receive depending on the relative credulity as well as the prosperity of the victim. The promised profits varied and there were, in some instances, representations of average profits. We infer, because of the ample cross-section of franchise dealers whose testimony was heard, that \$85.00 a week for an average is grossly exaggerated. Most of the witnesses lost money over the period of the operation. Despite this clear inference, respondents made no effort to demonstrate statistically what the distributors were actually earning. We, therefore, conclude that the talk of prospective profits (which were non-existent in most cases) went far beyond mere sales talk and constituted misleading misrepresentations.

(16) Respondents' employees do not relocate display cases under normal circumstances.

A number of witnesses described, in some detail, the assurances of the salesmen that they maintained a continued interest in the success of the distributors and that they would return, re-examine the locations and relocate them if they were not profitable. This was not done. When the distributors complained to Mrs. Singer, she informed them, with few exceptions, that in their application they had expressed the willingness to relocate the clocks if it became necessary and, therefore, the Time Industries had no obligation to do so.

(17) There is no proof as to whether respondents' salesmen or their wives engaged in the sale of respondents' products at retail through respondents' plan.

A few of the witnesses indicated the salesman had told them that he or his wife or family had engaged in making sales through the respondents' plan. However, none of the salesmen were called by either side and there was no proof establishing that this representation was true or false.

(18) In a great majority of cases described by the cross-section represented by the witnesses, two to four clocks were not sold weekly from each display case, and the national average of such sales accordingly would appear to be much less than three to four clocks weekly.

A number of witnesses testified that the salesmen who called on them described the number of clocks which would be sold from each display case. This number varied much as the representations concerning the prospective profits varied, depending on the relative credulity of the witness. There were also varied statements made about the national average. On the basis of all of the representations described by witnesses, the estimate was so far out of line with per-

formance that it went beyond mere sales talk and became active misrepresentation. No statistical proof was offered as to the national average from the books of the respondent either by the Commission or by the respondent. However, the evidence of the cross-section of witnesses offered by the Commission creates an inference that the national average was much less than that represented. No effort was made by respondent to establish otherwise.

(19) Many purchasers of respondents' products do not liquidate their investments through profits in a short time or in the period of time commensurate with the representations respecting earnings, and many persons lose substantial portions of their investments.

The precise representations concerning liquidating the investment varied among salesmen according to the witnesses who described these representations. The salesmen created the impression that there was no risk of loss, and some expressly stated that the investment would be liquidated within very short periods of time. In practice, the witnesses who testified found this rosy prospect was completely deluding. Moreover, the investment could not have been liquidated rapidly because the distributors made no net profit at all until after all of the original clocks were sold and sales of reordered merchandise were made. As already demonstrated, there was a substantial risk of loss because the repurchase plan never adequately reimbursed the distributor. A great majority of the witnesses lost money.

It is thus very clear from an analysis of each of the representations that there was a studied plan to misrepresent the character and profitability of the so-called franchise arrangement. David Singer, as proprietor of Time Industries, and his wife were clearly responsible for these representations which were false. Proof of their individual participation is discussed, as is that of the other individual respondents, following findings with respect to Waltham.

Waltham Watch Company's Responsibility

The allegations concerning the activity of respondent Waltham Watch Company are found in Paragraphs two, three, and nine of the complaint. Very briefly, it is charged that respondent Waltham imported clocks from West Germany into the United States and sold them to Time Industries for distribution throughout the United States during part of the time and that thereafter Time Industries imported the clocks. It is also charged that respondent Waltham places means and instrumentalities in the hands of Time Industries to mislead the public as to the origin and manufacture of the clocks. During the Commission's case, there was a slight variation between the allega-

1692

Initial Decision

tions and the proof concerning importation which was cured by an amendment to the complaint. Waltham's part, both before and after the change in method of importation, had substantially the same defect. It issued a license to Time Industries to utilize the name Waltham. It contracted for a substantial royalty for the use of this name and took no steps whatever to prevent confusion on the part of the public as to the origin and manufacture of the clocks.

The name "Waltham" has been associated in the minds of the public with the Waltham Watch Company of Massachusetts, one of the former leaders in the American Watch industry.⁶ Waltham was charged with knowledge of the history and reputation of the Massachusetts company. It also knew both at the time that it purchased them and at the time it licensed Time Industries to purchase them, that the clocks to be sold by Time Industries were manufactured in West Germany (CX-33 a, b), and had the "Waltham" name affixed to the dials. In its agreement with Time Industries and Singer, Waltham reserved a right to approve the advertising (id). It took no effective steps to do so until after the complaint was issued in this case. The purchasers of franchises from Time Industries were confused by the representations in the Time Industries' advertisements. From these advertisements, they properly considered that the firm whose clocks they were asked to sell was the old established Waltham Watch Company of Massachusetts which had for so many years an outstanding reputation in American watchmaking. Respondent Waltham made it possible for Time Industries to create this misleading impression under claim of right by the issuance of its license. Advertisements and complaints brought these misrepresentations to Waltham's attention earlier than December 1959 (RX-43, 1126 and 1133). It cannot benefit from the proceeds of Time Industries' representation by reserving a royalty fee and, at the same time, disclaim responsibility when it failed to exercise any effective means of preventing the misrepresentations charged. Although no figures were offered as to the exact amount that Waltham obtained as a result of its license to Time Industries, the contract provided for a minimum royalty of \$50,000 annually and \$0.50 for each clock (CX-33c).⁷ Mr. Aronson recalled that payments had been approximately \$50,000.

⁶ As Time Industries pointed out in its Summary and Conclusions (CX-61c), "Waltham is in the singularly advantageous position of being able to appeal to both preferences—domestic and imported. Waltham—'The first name in American Watches'—has every implication of American manufacture. To it can be added the advantages that accrue to imported merchandise."

⁷ Royalties shown in CX-72 include royalties on sales of watches in foreign countries as well as clocks by Time Industries. All royalties for the six months ending December 31, 1960, amounted to \$27,859.

The Responsibility of Individual Respondents

Harry Aronson is the principal stockholder and chief executive officer of respondent Waltham Watch Company. He and his family owned over sixty percent of the stock of the company. He has had long experience in the watch business and is generally familiar with the clock and watch industry. He executed the current license agreement with Time Industries which granted that company a claim of right to misrepresent the origin and manufacture of the clocks which Time Industries sold. While Aronson testified that he made no check on the advertising material of Time Industries until after the complaint was filed, some of the advertisements came to the attention of Waltham Watch Company. Goldstein testified he brought an advertisement like CX-6 to Aronson's attention in October or November 1959 (1134). Moreover, Waltham had expressly reserved the right to approve in advance any advertising which Time Industries might issue. Knowing the industry, the origin of the clocks and the reputation of Waltham Watch Company of Massachusetts, his failure to check Time Industries' operations to insure that the public was not misled, created an instrument of deception. Moreover, he stood by, in the face of complaints by franchised distributors, and reports by his own advertising department without taking any effective steps to prevent the continuance of Time Industries' misleading practices.

Lawrence Aronson

Lawrence Aronson is Vice President of respondent Waltham Watch Company and is the son of Harry Aronson, as well as being a stockholder. The only testimony in the record concerning him, in addition to that identifying him, is his father's which completely exonerated him of any responsibility for the arrangements between Waltham and Time Industries, or for the checking of the advertising of the latter concern.

David Singer

David Singer is the sole proprietor of Time Industries. He checked and approved the advertising received in evidence and personally received complaints from some of the disgruntled distributors. He had full knowledge of the operation of the sales scheme, and while he may not have known in detail all of the representations made by the salesmen he hired, he failed utterly, even when representations were drawn to his attention to take effective steps to prevent the public from being misled. He supplied the cards (described in footnote 4 *supra*) with the Waltham name and the Waltham display cases. He hired salesmen under an arrangement whereby they secured a commission for selling the franchises, clothed them with no responsibility other than

1692

Initial Decision

collecting the money. This was done in the face of his advertising which implied to the prospective franchise distributors that the plan involved a careful selection. He knew there would be no selection, there would be no reservation of territory, and that the salesmen would tend to appoint anyone who had the money and the means of servicing their route.

Singer was experienced in the watch industry and clearly knew Waltham's reputation and the danger of confusion in the method of advertising which was adopted. This advertising, the cards he provided for his salesmen, and the setup of the display cases, all emphasized Waltham, when, in fact, what the distributor was getting was a relatively inexpensive West German clock.

Muriel Singer

Muriel Singer is David Singer's wife. Both David Singer and his wife testified that he was the controlling force behind Time Industries and made all the decisions. They also attempted to create the impression that Mrs. Singer was merely helping out her husband much as an employee would do. However, the attempt by Mr. Singer to assume all the responsibility and to exonerate Mrs. Singer does not stand up against the other evidence. Moreover, Mrs. Singer's alertness and demeanor on the witness stand, as well as her correspondence, indicate that her role was much more significant. She admitted discussing the affairs of Time Industries with her husband, was present during many of the conferences held by her husband and wrote most of the letters received in evidence under the title Office and Field Manager. These mark her a responsible factor in the enterprise. The testimony of the witnesses confirms this impression. Milton Hettleman testified that he had dealt with both Mr. and Mrs. Singer but spoke to her most of the time. Marinoff stated that he had been referred to Mrs. Singer by Mr. Singer and had discussed with her his complaint that the clocks were not made in Switzerland as had been represented to him. Jui stated that he had drawn Mrs. Singer's attention to the representation that he was dealing with Waltham. Mosher dealt with Mrs. Singer, and she returned his deposit when he claimed that there were false representations made. Rodrigues stated that he had told Mrs. Singer about the representations salesman Parker had made, so she was fully aware of the character of the sales effort. Mrs. Singer's activities and responsibility, as demonstrated by the witnesses and by her activity, indicate that she was assisting her husband as a principal, with knowledge that he was engaging in a scheme to mislead the purchasers of franchises. It was stipulated that an FTC investigator was referred to Mrs. Singer when Mr. Singer was in Europe.

Effect on Competition

While no competitors of respondent Waltham were called to testify concerning the effect of the misrepresentations on their business, it is clear from the testimony and from the exhibits that there are a number of manufacturers of spring-actuated as well as electrically-powered clocks selling in the same markets in which respondents seek to sell their products. It is also clear from the testimony of the distributor's witnesses that the name "Waltham" caused them to make initial contact with Time Industries because of their knowledge of the reputation of the Waltham Watch Company of Massachusetts. The advertising to the ultimate consumer as well as that directed to the franchise distributors was such that it was calculated to deceive prospective purchasers of distributorships, as well as of clocks, into the mistaken belief that they were purchasing the products of the Waltham Watch Company of Massachusetts, and thus to cause them to refrain from purchasing the products of respondents' competitors. Moreover, proof of actual diversion or deception is unnecessary under the Wheeler-Lea Amendment of 1938^s to the Federal Trade Commission Act. The misleading character of the acts and practices without more are prohibited. *Progress Tailoring Co. v. F.T.C.* (7th Cir. 1946) 153 F. 2d 103.

Approval of Certain Findings of Fact Proposed by Respondents

Where the hearing examiner is in agreement or in substantial agreement with the whole or some part of the findings proposed by respondent, they are adopted with amendments, necessary to make them conform to the facts established, and comments as follows:

1. There is no evidence of deception of the ultimate consumer whatsoever as none were called to testify. However, as heretofore pointed out, the representations, on the clocks and on the display cases, had a tendency to deceive the public as to the manufacturer and origin of the clocks.

2. Every franchised distributor of Time Industries signed a contract which was, according to the evidence, with few exceptions, fully performed by Time Industries. Several witnesses, however, testified that they were not permitted to examine the contract carefully and were rushed into signing it.

3. There was no written evidence that Time Industries failed to perform according to its written guarantee when called upon to do so. The guarantee, however, was conditional and not unconditional as represented.

^s 15 U.S.C.A. 45, 52 Stat. 111.

4. All "Waltham" clocks sold by respondent Singer were imported from West Germany and marked in small letters, "West Germany" on the face, in addition to bearing the name "Waltham" in larger letters. The clocks made physical exhibits bear the word "Germany" stamped on the back as well as "West Germany" on the face. The boxes, however, give the impression that the watches are American made.

5. Some of the imported clocks were assembled or cased by Time Industries after import. For a time, Time Industries maintained a crew of several technicians for testing and repairing clocks, in addition to a small group to assemble clocks.

6. Salesmen of Time Industries signed an agreement designating them independent contractors. They were paid a commission on "sales" and were supplied cards and advertising material by Singer. In the advertising directed to prospective distributors, Time Industries clothed these salesmen with apparent authority.

7. Time Industries' form contract with distributors expressly stated that the franchise was non-exclusive. However, there was a blank spaced filled in with an area description in some of the form contracts which to the unwary would appear to grant an exclusive territory.

8. Many franchise distributors were attracted by the trade name "Waltham" which Time Industries had, by agreement with Waltham Watch Company, secured a claim to an exclusive right to use on clocks. Many of the franchised distributors testified that they became aware that the clocks were not made by Waltham Watch Company of Massachusetts, after making an initial contact with Time Industries and after they were shown clocks with the designation "West Germany" on them by the salesmen. Some were disappointed when the trade name "Waltham" did not sell their product as they had expected it to do.

9. David Singer, trading as Time Industries, determined its policies as to buying, marketing and advertising and did not consult with Waltham, even though he had agreed to submit his advertising, when the demand was made for him to do so under the terms of his "license" agreement to use the name "Waltham."

10. Respondent Waltham Watch Company succeeded by a "spin-off" in corporate reorganization of Waltham Watch Company of Massachusetts to certain rights to utilize the name Waltham in certain types of activity. The latter company had, however, ceased manufacture and sale of clocks at the time. Respondent Waltham made a contract with David Singer which purported to give him the exclusive right to use that name in connection with the sale of clocks under con-

Initial Decision

60 F.T.C.

ditions set forth in the contract. Neither such corporate reorganization nor the contract gave either respondent Waltham Watch Company or respondent David Singer, trading as Time Industries, the right to misrepresent the manufacturer, its age, reputation or the country of origin of clocks sold by either of them.

11. Shortly before and following the issuance of the complaint in this matter, respondent Waltham attempted to require David Singer to submit his advertising for editing by Waltham. After Singer ignored the request and became in arrears on royalty payments, respondent Waltham cancelled the license purporting to authorize the use of the name "Waltham" on clocks. This cancellation does not, however, render this matter moot as Waltham still claims the right to utilize and to license others to utilize the name "Waltham" without the safeguards to insure against deception of the public.

12. A number of witnesses testified that they sought franchises from Time Industries because they thought the clocks were made by the well-known Waltham Watch Company of Massachusetts. Inherent, though not expressed, was the fact that they thought the clocks were made in Massachusetts.

CONCLUSIONS OF LAW

The Federal Trade Commission has jurisdiction of the persons of respondents and of the subject matter of this proceeding. Respondents are engaged in interstate commerce, and the practices charged took place in commerce as that term is defined in the Federal Trade Commission Act. There is substantial competition between respondents and other manufacturers and distributors of clocks. This proceeding is in the public interest and the findings of fact are made on the basis of substantial and reliable evidence.

Time Industries and David Singer secured a claim of right to use the name "Waltham" in connection with clocks by virtue of a license from Waltham Watch Company of Delaware. The licensing of Time Industries and David Singer to use the name "Waltham" does not, however, constitute a defense to a charge against Time Industries and David Singer of unfair or deceptive acts or practices.

The name "Waltham" has long been known to the public, and time-keeping products bearing that name have been associated with the Waltham Watch Company of Waltham, Massachusetts, connoting the first name in American watches. It has thus attained a secondary meaning. The name "Waltham" is clearly and distinctly printed or stamped on the dials or faces of the clocks imported by respondent Singer and was similarly imprinted on the clocks imported by Wal-

tham Watch Company. Said clocks were sold to the public by purchasers from Time Industries, and the display cases provided by Time Industries feature the name "Waltham" in addition to the phrase, "Product of Waltham Watch Co. since 1850." This use by respondents of the name "Waltham" in connection with said clocks, unless accompanied by a clear disclosure that said clocks are made in West Germany and are not the product of Waltham Watch Company of Waltham, Massachusetts, has a tendency and capacity to lead the public into the erroneous and mistaken belief that said clocks are the product of Waltham Watch Company of Waltham, Massachusetts.

The use by the respondents of the false, misleading and deceptive statements and representations described in the findings of fact has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that the statements are true, and has the tendency and capacity to cause a large proportion of the purchasing public to purchase substantive quantities of the products sold by respondent, Time Industries, Inc., on which respondent Waltham has reserved a royalty. As a result of this tendency, trade tends to be unfairly diverted to respondents from their competitors and thus injury has been and is now being done to competition in commerce.

Since the name "Waltham" as used in the advertising of Time Industries is placed in the context which is calculated to deceive readers as to the management, operation and experience of the manufacturer, (See *A.P.W. Paper Co., Inc. v. F.T.C.*, 149 F. 2d 424 (2d Cir. 1945)), such use of the name "Waltham" by Time Industries is an unfair and deceptive act and practice within the meaning of Section 5 of the Federal Trade Commission Act.

The use of the name "Waltham" by Time Industries in advertising matter designed to sell clocks imported from West Germany has the tendency, where no mention is made of the foreign origin of such clocks, to mislead the public into the belief that the clocks are the product of Waltham Watch Company of Massachusetts, a well-known former domestic manufacturer of watches and clocks. Such use is accordingly an unfair and deceptive act and practice within the meaning of Section 5 of the Federal Trade Commission Act. (See *C. Howard Hunt Pen Co. v. F.T.C.*, 197 F. 2d 273 (3rd Cir. 1952) and *Edward P. Paul & Co. v. F.T.C.*, 169 F. 2d 294 (D.C. Cir. 1948)).

Time Industries and its proprietor, David Singer, are responsible for the representations made in advertisements authorized by them and also for representations made by salesmen employed by them, despite efforts to relieve themselves from responsibility by attempting

Initial Decision

60 F.T.C.

to make the salesmen independent contractors. *F.T.C. v. Standard Education Society et al.*, 302 U.S. 112 (1937) *cf. Globe Readers Service, Inc. v. F.T.C.* (Federal Trade Commission Docket 7490), 7th Cir., June 3, 1961. Such salesmen were clothed with apparent authority to represent Time Industries and David Singer. Their representations, in the main, corresponded with the representations contained in the advertising authorized by Singer.

The false representations made in the advertisements were capable of procuring and did, in some instances, procure the victims to make initial contact with Time Industries. It was thus immaterial that later statements were made to the contrary and that the formal documents, later signed, demonstrated that some of the representations in the advertising were untrue. When the initial contact is procured by misrepresentation, subsequent events or representations do not expunge the original wrong. *Matter of Exposition Press, Inc.*, Docket 7489, December 20, 1960; *Carter Products, Inc. v. F.T.C.*, 186 F. 2d 821 (7th Cir. 1951), and *F.T.C. v. Standard Education Society, et al.*, 302 U.S. 112 (1937).

The representations, containing prospective profits, sales, etc., went beyond mere puffing and constituted misrepresentations, and thus unfair acts and practices within the meaning of Section 5 of the Federal Trade Commission Act. *Washington Mushroom Industries, Inc., et al.*, 53 F.T.C. 369, (October 24, 1956); *William J. Miskel, et al., doing business as Tanners Shoe Company*, 53 F.T.C. 1137, (June 13, 1957); *In the Matter of Allan Goodman Trading as Weavers Guild*, 52 F.T.C. 982, (March 14, 1956); *Tractor Training Service, et al.*, 50 F.T.C. 762 (March 3, 1954), *cf. Illinois Continental Machine Corp., et al.*, 54 F.T.C. 610, November 15, 1957, where the proof failed to establish that the representations were false.

Whether or not there was a preference for or against foreign-made goods is immaterial. The customer is entitled not to be deceived by the advertising as to the origin of the product advertised. *In the Matter of Manco Watch Strap Co., Inc.*, July 17, 1961, Docket 7785. Respondents' contention that, because Waltham of Massachusetts had imported Swiss watches before the reorganization, it transmitted to respondent Waltham the right to import "Waltham" clocks, simply does not follow. Waltham of Massachusetts had long prior to that time ceased the manufacture and sale of clocks. It did not import them. Moreover, if Waltham of Massachusetts had embarked in a program of misrepresentation, such as that here disclosed, the fact that it was the original owner of a well-recognized name would not permit it to utilize that name in a manner calculated to deceive the

1692

Initial Decision

public. *Edward P. Paul & Co., Inc. v. F.T.C.*, 169 F. 2d 294 (D.C. Cir. 1948). The further contention that other watch companies palm off imported watches as domestic products is likewise immaterial. The Supreme Court has recently reiterated the sound principle that two wrongs do not make a right and that a respondent cannot justify his unlawful activity by claiming that he is only meeting competitors who are engaged in an unlawful plan. *F.T.C. v. Staley Mfg. Co., et al.*, 324 U.S. 746 (1945).

The representations concerning the location of display cases, the lack of selling required, the protection of purchasers investment, the selection of franchise distributors, the guarantee that the franchise will make money, the guarantee of the product in the hands of ultimate consumers, the exclusivity of territory, the executive character of the salesmen, the training to be provided, the employment of salesmen by Waltham, refunds of purchase price, and services available for relocation, were false and constitute unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. (See *Holland Furnace Company v. F.T.C.*, (Federal Trade Commission Docket 6203), Opinion Judge Duffy, October 11, 1961, 7th Cir.)

Whatever right respondent Waltham secured to use the name "Waltham" in connection with the business of manufacturing and selling watches by virtue of the reorganization of Waltham Watch Company of Massachusetts, it is doubtful that the right to use the name "Waltham" on clocks was validly transmitted to the Delaware company because Waltham of Massachusetts had some time before ceased to manufacture clocks. It had no inventory of clocks and no going business in clocks to transfer. See *Mulhens & Kropff, Inc. v. Ferd Muelhens, Inc.*, 22 F. 2d 191 (S.D. New York 1927). See also *Gehl v. Hebe Co.*, 276 Fed. 271 (CCA, 7th Cir. 1921). It is, however, unnecessary to a decision in this proceeding to determine whether or not either the transfer to respondent Waltham or the subsequent license to respondent Singer, trading as Time Industries, was valid. Respondent Waltham Watch Company is not at liberty to use the name "Waltham" in a fashion that would mislead the public.

Respondent Waltham, by its grant of authority to David Singer and Time Industries to utilize this well-recognized "Waltham" name on products of which it neither supervised the production, the advertising, nor the distribution, placed in the hands of Singer and Time Industries a means to deceive prospective purchasers of franchises from Time Industries.

Respondent Waltham, by reason of the wide advertising by Time Industries and the complaints received by it, was required to inquire into the use by Time Industries of the Waltham name, since it had notice that Time Industries was importing clocks from West Germany, and since it had reserved authority to approve advertising prior to its release. It could not continue to receive the substantial benefits of its contract with Time Industries and David Singer, and disassociate itself from responsibility for overseeing the advertising of Time Industries in the use of the Waltham name.

The placing in the hands of Time Industries and Singer the right to use the Waltham name on imported merchandise under circumstances in which the public might be misled, constituted an instrumentality to deceive and was an unfair act and practice within the meaning of Section 5 of the Federal Trade Commission Act.

Similarly, by placing in the hands of its distributors and locating in retail stores the display racks on which the name "Waltham" and the phrase, "Product of the Waltham Watch Co. since 1850" appeared, Time Industries and David Singer placed in the hands of the distributors and the retail merchants a means to deceive prospective retail purchasers of the clocks as to the manufacturer, its age and reputation, and as to the country of origin of the clocks, under circumstances in which the public might be misled. This also constituted an instrumentality to deceive and was an unfair act and practice within the meaning of Section 5 of the Federal Trade Commission Act. *Winstead Hosiery v. F.T.C.*, 258 U.S. 483 (1922); *Globe Cardboard Novelty Co., Inc. v. F.T.C.*, 192 F. 2d 444 (3rd Cir. 1951), and *Chicago Board Company v. F.T.C.*, 253 F. 2d 78 (cert. denied), 358 U.S. 821 (7th Cir. 1958).

Respondent David Singer is the sole proprietor of the unincorporated business known as Time Industries, and is responsible for the unfair and misleading acts and practices perpetrated under its name. Respondent David Singer, individually had knowledge of the unfair acts and practices, or some of them, perpetrated under the name, Time Industries, and personally ordered or approved such acts and practices.

Respondent Muriel Singer, individually had knowledge of the unfair acts and practices, or some of them, perpetrated under the name, Time Industries, and with such knowledge personally assisted in furthering such activities as a principal in the unlawful enterprise.

Respondent Harry Aronson is an official and a substantial stockholder of respondent Waltham Watch Company. He executed on behalf of said company the agreement, placing in the hands of David Singer and Time Industries, the means of deceiving the public, and,

1692

Initial Decision

although chargeable with knowledge of the unfair acts and practices of Singer and Time Industries, took no effective action to stop them.

Respondent Lawrence Aronson, despite the fact that he is an officer and stockholder of Waltham Watch Company, was not shown to have authorized, undertaken or approved any acts leading to the unfair and deceptive practices charged, and this proceeding accordingly should be dismissed as to him in his individual capacity.

Respondents, David Singer, Muriel Singer, and Harry Aronson, have committed unfair and deceptive acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act, and, accordingly, an order should be issued requiring each of them individually to cease and desist from such practices, in addition to the order to be issued against the unincorporated business of Time Industries and the corporate respondent, Waltham Watch Company of Delaware.

It is appropriate, in the circumstances of this case, that the order require an express statement that the products are not manufactured by Waltham Watch Company of Massachusetts be made in connection with the use of the name "Waltham" to prevent deception of the public. *Theodore Kagen Corp. v. F.T.C.*, Federal Trade Commission Docket 6893, (C.A.D.C. 1960); *Keele Hair & Scalp Specialists, Inc., et al. v. F.T.C.*, 275 F. 2d 18 (5th Cir. 1960); *Ward Laboratories, Inc. v. F.T.C.*, 276 F. 2d 952 (2nd Cir. 1960), and *Bantam Books, Inc. v. F.T.C.* 275 F. 2d 680 (2nd Cir. 1960).

ORDER

It is ordered, That Time Industries, an unincorporated business, David Singer, individually and trading as Time Industries, or under any other trade name or names, and Muriel Singer, individually and as Office and Field Manager of Time Industries, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of clocks or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Offering for sale or selling any product which is in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such product the country of origin of the product, and on the advertising used in connection therewith, and if said product is enclosed in a package or container, on the package or container of the product, in such manner that the name of the country of origin will not be hidden, obscured or obliterated.

II. Using the word "Waltham" as part of the name of any product unless the public is clearly warned by a statement, in immediate connection therewith, that the product is not manufactured by the Waltham Watch Company of Waltham, Massachusetts, and, unless, in addition, the product is manufactured under the direction of respondent, Waltham Watch Company, and the right to use such name is licensed and the use supervised by said respondent, Waltham Watch Company.

III. Representing, directly or by implication, when such is not the fact that:

1. Any product is manufactured by Waltham Watch Company of Waltham, Massachusetts, or in any other way misrepresenting the age, reputation or location of the manufacturer.

2. The business of said respondents is connected in any way with the Waltham Watch Company of Waltham, Massachusetts.

3. Display cases for the sale of clocks will be located in leading drug stores, chain stores, markets and other profitable locations.

4. Selling is not required of persons who purchase franchises.

5. The initial investment of persons who purchase franchises is protected or guaranteed.

6. Any percentage will be earned on an investment in a franchise.

7. The products are sold only to a limited number of selected and qualified franchise distributors.

8. Any sales proposition is guaranteed to be money making.

9. Any product is unconditionally guaranteed, or guaranteed to any extent unless the terms and conditions of the guarantee are clearly and unmistakably disclosed.

10. Any territory is reserved exclusively for any franchised distributor, or he is granted any exclusive territory within which to operate his business.

11. Any salesman is an executive of Time Industries, or a representative or executive of Waltham Watch Company of Waltham, Massachusetts, or connected with the latter firm.

12. The full refund of the purchase price of unsold merchandise will be made.

13. Any designated profit will be earned.

14. Employees of said respondents will relocate display cases.

15. Any number of clocks will be sold from each display case during any interval or that the national average of such sales is any particular figure.

16. Any number of franchise dealers liquidate their investments through profits during any period of time.

IV. Placing in the hands of others means and instrumentalities whereby they may mislead the public as to the manufacturer or the place of origin of clocks or any other product.

It is further ordered, That Waltham Watch Company, a corporation, and its officers, and Harry Aronson, individually and as an officer of said corporation, and Lawrence Aronson as an officer of said corporation, and said respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the use of the name "Waltham," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Using or authorizing any person to use the name "Waltham" in connection with the sale of clocks or any other product unless it supervises said use and insures that the name is so utilized that:

1. The public is clearly warned by a statement immediately in connection therewith, that the product is not manufactured by the Waltham Watch Company of Waltham, Massachusetts, and,

2. If the product is of foreign origin, the country of origin of the product is clearly and conspicuously disclosed on the product, on the advertising used in offering it for sale, and on any package or container in which the product is enclosed, in such manner that the name of the country of origin will not be hidden, obscured or obliterated.

II. Placing any means or instrumentality in the hands of others whereby they may mislead the public, as to the manufacturer of any product which they sell, the manufacturer's age, experience and reputation or the country of origin of the product.

It is further ordered, That the complaint is dismissed as against respondent, Lawrence Aronson, individually, but not as an officer of respondent, Waltham Watch Company.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission upon the exceptions to the initial decision filed by respondents, Waltham Watch Company, Harry Aronson and Lawrence Aronson, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That respondents' exceptions to the initial decision be, and they hereby are, denied.

Complaint

60 F.T.C.

It is further ordered, That the hearing examiner's initial decision, filed November 14, 1961, as corrected by his orders filed December 11, 1961, and April 20, 1962, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Waltham Watch Company, a corporation, Lawrence Aronson, as an officer of the said corporation, Harry Aronson, individually and as an officer of the said corporation, and David Singer and Muriel Singer, individually, 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 to cease and desist.

IN THE MATTER OF

THE JOHN GERBER COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-148. Complaint, June 18, 1962—Decision, June 18, 1962

Consent order requiring a furrier in Memphis, Tenn., to cease violating the Fur Products Labeling Act by failing to show on invoices of fur products the true animal name of the fur and the country of origin of imported fur, by advertising falsely in newspapers that prices were reduced due to a special purchase when the fur products concerned were the property of an independent third party operating temporarily and conducting a sales promotion on the premises under respondent's name; and by failing to keep adequate records disclosing the facts upon which price and value claims in advertising were based.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that The John Gerber Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 The John Gerber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 25 North Main Street, Memphis, Tenn.