[¶ 69,654] **United States v. The Watchmakers of Switzerland Information Center, Inc., et al.**

In the United States District Court for the Southern District of New York. Civ. 96-170. Dated March 2, 1960.

Case No. 1207 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Suits for Injunctive Relief—Discovery and Production of Evidence—Admissions—Authenticity of Documents.—"It would appear that unless it can be shown by the objecting party that under no possible circumstances could a document be admissible, the objection [to a request for admission of authenticity] must be overruled." On that principle, the Government's objection to admitting the authenticity of certain "Swiss Decrees," because of their alleged irrelevance, was overruled. The court found "completely without merit" another Government contention that it could not respond affirmatively or negatively to the request to admit. Another alternative, a qualified denial, remained open to it. The court also rejected a Government argument that the admission of documents consisting of less than 90 typed pages would be burdensome.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8225.200.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, and W. D. Kilgore, Jr., Baddia J. Rashid, Richard B. O'Donnell, Mary Gardiner Jones, Max Freeman, W. Louise Florencourt, Carl L. Steinhouse, Elliott H. Feldman and Ethanan C. Stone, Attorneys, Department of Justice.

For the defendant importers: Robert Perret and Solinger & Gordon by Eugene A. Gordon, of counsel (for Eterna Watch Co. of America, Inc.); Goodwin, Danforth, Savage & Whitehead (for Diethelm and Keller (USA) Ltd.); Albert Lee Singer (for Concord Watch Co., Inc. and Movado Watch Agency, Inc.); Lipper, Shinn & Keeley by Aaron Lipper (for Jean R. Graef, Inc., The Henri Stern Watch Agency, Inc., and The American Rolex Watch Corp.); Murray Sprung (for Wyler Watch Corp.); Milton W. Levy (for Rodania Watch Co., Inc.); David Baumgarten (for Norman M. Morris Corp.); Guggenheimer & Untermyer by Edward First (for Cyma Watch Co., Inc., now known as Berco, Inc.).

For the defendant association: William H. Fox; Davies, Richburg, Tydings, Landa and Duff, by C. Robert Mathis; and J. Lee Murphy.

For the defendant advertising agency: Frederick W. R. Pride; Charles F. Young; and Royall, Koegel, Harris & Caskey.

For prior opinions of the district court, see 1959 Trade Cases ¶ 69,571, 69,550, and 69,314, and 1955 Trade Cases ¶ 68,145 and 68,096.

Memorandum

[Request for Admission of Authenticity]

CASHIN, District Judge *[In full text]*: Plaintiff objects to defendants Longines-Wittnauer Watch Co., Inc. and Wittnauer et Cie, S. A.'s request for admission of the genuineness and authenticity of Swiss Decrees. The objections are on the following grounds:

1. The request as to all of the decrees is objected to on the ground that "* * * facts appearing from the face of the documents themselves raise such serious doubts as to their genuineness as to render it impossible for plaintiff to respond affirmatively or negatively to Defendants' Request".

2. Certain of the decrees are irrelevant.

[Alternative of Qualified Denial]

The first objection I consider without any merit whatsoever. Rule 36 of the Federal Rules of Civil Procedure does not prescribe unequivocal admissions or denials. Rather, a third alternative is open to the party upon whom a request is served. That party may

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"* * * serve * * * a sworn statement * * * setting forth in detail the reasons why he cannot truthfully admit or deny * * *" the matters concerning which admissions have been requested. The matters contained in plaintiff's statement of objection and in the affidavit submitted in support thereof might properly be made in such a qualified denial. I do not now pass upon whether the reasons advanced are sufficient to excuse a categorical admission or denial. I do hold, however, that they are not valid grounds for an objection. The objection on the first ground is, therefore, overruled.

[Relevancy—Burdensomeness]

The second ground of objection is, however, provided for in Rule 36 of the Federal Rules of Civil Procedure. It is provided that the party served with a request may serve "written objections on the ground that some or all of the requested admissions are * * * irrelevant or that the request is otherwise improper in whole or in part". Although the plaintiff's objection on the second ground is in form addressed only to relevancy, the argument is further made that the request is unduly burdensome. There would appear to be no reported cases precisely defining the meaning of "irrelevant" in the context of Rule 36. Professor Moore in his treatise on the Federal Rules states that the term should be given the same connotation as in the other discovery rules. (4 Moore's *Federal Practice*, 2d Edition, § 36.06, p. 2722). This definition of irrelevancy appears to me to be too broad when utilized in connection with Rule 36. Information is relevant for discovery purposes if it is reasonably calculated to lead to the discovery of admissible evidence. (Rule 26(b) Federal Rules of Civil Procedure). Rule 36 obviously presupposes that the information contained in the request has already been "discovered". The admission of truthfulness or genuineness by the opposing party is only to obviate the necessity of proving, at the trial, facts which are not in substantial dispute. (cf. 4 Moore's *Federal Practice*, 2d Ed. § 36.02). Thus, a request for the admission of authenticity of documents which could not be admitted into evidence at the trial would certainly be a request for the admission of irrelevant documents. I do not believe, however, that it is incumbent upon me in ruling on objections to a request for the admission of authenticity of documents to make, pre-trial, a ruling on admissibility. Rather, it would appear that unless it can be shown by the objecting party that under no possible circumstances could a document be admissible, the objection must be overruled. The plaintiff has attempted to meet this burden, but, in my opinion, without success.

The gist of the defense is that the actions of the defendants, of which the plaintiff complains, were necessitated by the provisions of Swiss law. Concededly, all of the decrees regulate, to some extent, the watch industry in Switzerland. Perhaps the Swiss law will prove to be unavailing as a defense. Similarly, it may be, in the framework of the issues as fully developed at the trial, the decrees may prove irrelevant. On the information before me, however, I cannot say that the decrees would be clearly inadmissible. Thus, the objection must be overruled.

Perhaps if the decrees were unduly long I might feel constrained to seek further information on which to base a more precise judgment of ultimate admissibility. However, the decrees objected to as irrelevant consist, in translation, of less than 90 double-spaced legal cap pages. In this "big case", such an amount of documentation is relatively slight.

The plaintiff further argues that it is not an expert in Swiss law and thus is unable to admit the authenticity of the documents. If anything, this argument would seem to relate to the first rather than the second ground of objection which has already been ruled upon above.

The objections of plaintiff are overruled in their entirety.

It is so ordered.

[¶ 69,655] **United States v. The Watchmakers of Switzerland Information Center, Inc.; Federation Suisse des Associations de Fabricants d'Horlogerie, Ebauches, S. A.; Foote, Cone & Belding; American Watch Association, Inc.; Bulova Watch Company, Inc.; Benrus Watch Company; Gruen Watch Company; Longines-Wittnauer Watch Company; Gruen Watch Manufacturing Company, S. A.; Eterna, A. G. Uhrenfabrik; Wittnauer et Cie, S. A.; Montres Rolex, S. A.; Concord Watch Co.; Eterna Watch Company of**

Exhibit D

America; Diethelm and Keller (USA) Ltd.; The American Rolex Watch Corporation; Rodania Watch Company, Inc.; Movado Watch Agency, Inc.; Jean R. Graef, Inc.; Norman M. Morris Corporation; The Henri Stern Watch Agency, Inc.; Cyma Watch Co., Inc.; and Wyler Watch Agency, Inc.

In the United States District Court for the Southern District of New York. Civil Action No. 96-170. Dated March 9, 1960.

Case No. 1207 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act and Wilson Tariff Act

Price Fixing—Restricting Distribution—Consent Decrees—Trade Association—Advertising Agency.—A trade association of Swiss watch importers and an advertising agency were prohibited by consent decrees from combining to fix prices. The association was further prohibited from attempting to prevent others from dealing in the watches or otherwise restricting channels of distribution.

See Combinations and Conspiracies, Vol. 1, ¶ 2011.181, 2015.170.

Resale Price Fixing—Refusal to Deal—Consent Decrees—Importers of Swiss Watches—Trade Association—Advertising Agency.—Eleven importers of Swiss watches and watchmaking machines were prohibited by a consent decree from combining to fix resale prices. A trade association was prohibited by a decree from entering into any agreement to eliminate price cutting. The importers were further prohibited from restricting use of the watches after sale. The importers, the association, and an advertising agency were also prohibited from refusing to sell solely by reason of the customer's pricing or sales policies.

See Resale Price Fixing, Vol. 1, ¶ 3015; Combinations and Conspiracies, Vol. 1, ¶ 2005.785.

Exclusive Dealing—Consent Decrees—Importers of Swiss Watches—Trade Association.—Importers of Swiss watches were prohibited by a consent decree from agreeing not to deal in watches of different quality from those purchased from their manufacturer-suppliers, and were prohibited from dealing exclusively in Swiss watches on the condition that the Swiss manufacturers extend them financial, technical, and other aid. However, the decree provided that it should not be construed as prohibiting the importers from contracting wih their respective manufacturer-suppliers to refrain from producing or dealing in watches of like quality and in the same price range as those purchased from the manufacturer-supplier.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.690.

Import, Export, and Production Control — Consent Decree — Importers of Swiss Watches—Trade Association—Advertising Agency.—Eleven importers of Swiss watches and watchmaking machines, a trade association, and an advertising agency were prohibited by consent decrees from entering into any combination to restrict the export, import, and production of watches. The association and the agency were also prohibited from restricting the sale, use, and distribution of the watches, and the agency was further prohibited from influencing conditions under which the watches are produced, exported, imported, sold, used, or distributed.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.055, 2005.718, 2005.760.

Foreign Commerce—Consent Decrees—Practices Enjoined—Limiting Imports and Exports—Importers of Swiss Watches—Trade Association.—Eleven importers were prohibited by a consent decree from agreeing with their manufacturer-suppliers to limit the export from the United States, or import from any country other than Switzerland into the United States, of watches or watch parts. Also, two of the importers were prohibited from attempting to prevent the sale to Americans traveling abroad of watches produced by their respective manufacturer-suppliers.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.055, 2035.350.

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Exclusion from Trade—Consent Decrees—Practices Enjoined—Restraint on Replacement of Parts—Importers of Swiss Watches—Trade Association.—Eleven importers of Swiss watches and a trade association were prohibited by a consent decree from entering into any combination to prevent the removal and replacement of watch cases, dials, and hands.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.760.

Blacklists and Approved Lists—Consent Decrees—Importers of Swiss Watches—Trade Association—Advertising Agency.—Eleven importers of Swiss watches and watchmaking machines were prohibited by a consent decree from preparing boycott lists. Also, a trade association was prohibited from influencing the selection of the importers' customers, other than by supplying credit information. Further, an advertising agency was prohibited from blacklisting prospective buyers of the watches.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.518, 2017.142.

Selection of Exporters' Selling Agents — Consent Decrees — Importers of Swiss Watches—Trade Association.—Eleven importers of Swiss watches and watchmaking machines and a trade association were prohibited by consent decrees from regulating the selection of American selling agents for Swiss manufacturers or selecting the agents' customers.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.468.

Sale Control—Consent Decrees—Practices Enjoined—Preventing Consignment Sales.—Eleven importers of Swiss watches and watchmaking machines and a trade association were prohibited by consent decrees from preventing the sale of watches on a consignment basis in the United States.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.760.

Sale Control—Consent Decrees—Practices Enjoined—Required Guarantees—Required Use of Identification System.—Eleven importers of Swiss watches and watchmaking machines were prohibited by a consent decree from requiring resellers to offer any guarantee, except that the importers may require the use of their own or the manufacturer's guarantees. They were also prohibited from requiring the use of a designated identification system by any person selling for repair and replacement and were further prohibited from publishing the guarantee or repair policies of other importers, or the identity of other importers' customers.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.760.

Information Exchange—Trade Associations—Consent Decrees—Practices Enjoined—Publishing Information.—Eleven importers of Swiss watches and watchmaking machines were prohibited from publishing, except to their respective manufacturer-suppliers, information on any other person's prices. The importers and a trade association were prohibited from publishing information relating to the personnel, corporate ownership, or specific customers of, and the commissions earned by, any American agent of a Swiss exporter. The trade association and an advertising agency were prohibited from publishing information concerning the commercial practices, business reputation, or business conduct of any American in the watch business. The trade association was further prohibited from publishing, except in composite form, any information regarding sales of Swiss watches on consignment, or retail prices of watches sold in the United States, and from collecting, except voluntarily, information on the type and volume of watches sold; the agency was also prohibited from publishing any information on the type and volume, or costs and prices, of watches sold.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.730, 2017.168, 2017.248.

Trade Associations—Relief Against Unlawful Activity—Consent Decrees.—Eleven importers of Swiss watches and watchmaking machines were prohibited by consent decrees from maintaining any organization which contravenes any of the decrees in the case. Also,

a trade association of importers of Swiss watches was ordered to include in its by-laws a statement that the members were bound by the decree; to distribute a copy of the decree to each member; and to refrain from adopting any rule that contravened the decree.

See Combinations and Conspiracies, Vol. 1, ¶ 2017.355.

Contracts with Foreign Companies—Consent Decree—Practices Enjoined—Advertising Agency—Discriminatory Advertising.—An advertising agency was prohibited by a consent decree from inducing Americans to purchase Swiss watches only from retail jewelers, unless the ads pointed out that other sources also sell the watches. The agency was also prohibited from furnishing advertising and promotional material for Swiss manufacturers to American retailers on a discriminatory basis.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.055; Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8421.

Acquisitions of Stock or Assets—Consent Decree—Importers of Swiss Watches.—A consent decree entered against eleven importers of Swiss watches did not prohibit the importers from acquiring the stock or assets of other persons.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.833.

Resale Price Fixing—Consent Decree—Permissive Provisions—Importers of Swiss Watches.—Permissive provisions in a consent decree against eleven importers of Swiss watches allowed the importers to enforce resale prices in accordance with state and federal laws.

See Resale Price Fixing, Vol. 1, ¶ 3015.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, and W. D. Kilgore, Jr., Baddia J. Rashid, Richard B. O'Donnell, Mary Gardiner Jones, Max Freeman, W. Louise Florencourt, Carl L. Steinhouse, Elliott H. Feldman and Elhanan C. Stone, Attorneys, Department of Justice.

For the defendant importers: Robert Perret and Solinger & Gordon by Eugene A. Gordon, of counsel (for Eterna Watch Co. of America, Inc.); Goodwin, Danforth, Savage & Whitehead (for Diethelm and Keller (USA) Ltd.); Albert Lee Singer (for Concord Watch Co., Inc. and Movado Watch Agency, Inc.); Lipper, Shinn & Keeley by Aaron Lipper (for Jean R. Graef, Inc., The Henri Stern Watch Agency, Inc., and The American Rolex Watch Corp.); Murray Sprung (for Wyler Watch Corp.); Milton W. Levy (for Rodania Watch Co., Inc.); David Baumgarten (for Norman M. Morris Corp.); Guggenheimer & Untermyer by Edward First (for Cyma Watch Co., Inc., now known as Berco, Inc.).

For the defendant association: William H. Fox; Davies, Richburg, Tydings, Landa and Duff, by C. Robert Mathis; and J. Lee Murphy.

For the defendant advertising agency: Frederick W. R. Pride; Charles F. Young; and Royall, Koegel, Harris & Caskey.

For prior opinions of the district court, see 1955 Trade Cases ¶ 68,096 and 68,145, and 1959 Trade Cases ¶ 69,314, 69,516, 69,550, and 69,571.

Final Judgment as to
Eterna Watch Co. of America, Inc.
Diethelm and Keller (USA) Ltd.
Concord Watch Co., Inc.
Movado Watch Agency, Inc.,
Jean R. Graef, Inc.
The Henri Stern Watch Agency, Inc.
Wyler Watch Corporation
The American Rolex Watch Corporation
Rodania Watch Company, Inc.
Cyma Watch Co., Inc.
Norman M. Morris Corporation

CASHIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 19, 1954, defendants signatory hereto, defined hereinafter as defendant importers, having appeared herein and filed their answers to such complaint denying the substantive allegations thereof; and the plaintiff and the

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said defendants by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law herein and without admission by any party signatory hereto in respect to any such issue:

Now, Therefore, before any testimony has been taken herein, and without trial or final adjudication of any issue of fact or law herein, and upon the consent of the parties signatory hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter hereof and of the parties signatory hereto. The complaint states claims upon which relief may be granted against the defendants signatory hereto under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894 entitled "An Act To reduce taxation, to provide revenue for the Government, and for other purposes," commonly known as the Wilson Tariff Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendant importers" means the following defendants jointly and each of them separately:

(1) Eterna Watch Co. of America, Inc., herein called "Eterna";

(2) Diethelm and Keller (USA) Ltd., herein called "Diethelm";

(3) Concord Watch Co., Inc., herein called "Concord";

(4) Movado Watch Agency, Inc., herein called "Movado";

(5) Jean R. Graef, Inc., herein called "Graef";

(6) The Henri Stern Watch Agency, Inc., herein called "Stern";

(7) Wyler Watch Corporation, herein called "Wyler";

(8) The American Rolex Watch Corporation, herein called "American Rolex";

(9) Rodania Watch Company, Inc., herein called "Rodania";

(10) Cyma Watch Co., Inc., now known as Berco, Inc. and herein called "Cyma";

(11) Norman M. Morris Corporation, herein called "Morris NY";

(B) "Manufacturer supplier" means the Swiss producer of the watches distributed by a defendant importer in the United States;

(C) "Watch" means any timing mechanism: (1) with a jewelled lever or cylinder escapement, or (2) operating by means of electric or electronic force, or (3) with an escapement which has metal pins instead of jewels at the lever either with or without a center wheel, which is designed to be worn or carried on the person, and includes also the movement without the case;

(D) "Watch part" means any component part (including the case) of a watch with a jewelled lever or cylinder escapement or operating by means of electric or electronic force;

(E) "Watchmaking machine" means any machine designed to be used in the production of watches or watch parts;

(F) "Person" means an individual, partnership, firm, association or corporation, or any other business or legal entity;

(G) "Subsidiary" means any corporation more than 50% of the outstanding voting stock of which is owned by another corporation;

(H) "United States person" means any person residing or incorporated or having a place of business, whether directly or through a parent or subsidiary, in the United States;

(I) "Companion Final Judgment" means any other Final Judgment heretofore or simultaneously herewith entered in this action by consent;

(J) "Exclusive distributor" means a person in the United States designated by written agreement by a vendor of watches or watch parts, manufactured in Switzerland under a trade-mark which in Switzerland is the property of the vendor as exclusive distributor of such vendor's products in a designated geographical area and, if the products be watches, maintaining a repair service and minimum stocks of repair parts.

Said written agreement shall provide among other things for the substance of the following provisions:

(1) A term of substantial duration;

(2) The vendor will not sell its trade-marked watches or its watch parts, whether trade-marked or not, to any other person in the designated geographical area assigned to such distributor, except that the vendor may retain in such agreement the exclusive right to sell to federal, state or local governments or their agencies or quasi governmental organizations such as army post exchanges outside the United States and a nonexclusive right to make such sales within the United States;

(K) "Production" is not intended to include any of the following operations when performed by themselves: addition to a watch movement of a case, hands, dial or crown or the polishing, regulating or timing of a watch movement with or without the case.

III

[*Applicability*]

(A) The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant, its officers, directors, agents, servants, employees, successors, assigns and subsidiaries and to those persons in active concert or participation with any defendant signatory hereto who receive actual notice of this Final Judgment by personal service or otherwise.

(B) For the purpose of this Final Judgment, any defendant signatory hereto and its parent or substantially wholly-owned subsidiaries and their directors, officers, agents, servants and employees when acting in such capacity shall be considered as one person.

IV

[*Limiting Import and Export*]

(A) Defendant importers are ordered and directed to cancel and are enjoined from the further performance or enforcement of each of the provisions of any contract, agreement or understanding with their respective manufacturer suppliers and all amendments, modifications, extensions, renewals, replacements or supplements thereof, which limit the export from the United States or import from any country other than Switzerland into the United States of watches or watch parts produced by their respective manufacturer suppliers or prevent such defendant importers from manufacturing or otherwise dealing in watches or watch parts which are not of like quality to and in the same price range as watches or watch parts purchased from their respective manufacturer suppliers;

(B) Defendants American Rolex and Morris NY are enjoined from entering into, implementing or furthering any agreement or understanding or otherwise taking any action to prevent or discourage the sale outside the United States to American citizens traveling abroad of watches produced by their respective manufacturer suppliers, and are ordered to notify their respective manufacturer suppliers in writing that they have no objection to the sales of watches by such suppliers to any sellers particularly catering to American citizens.

V

[*Restraints of Trade—Price Fixing*]

Each defendant importer is enjoined from entering into, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement, understanding, plan or program, with any manufacturer of watches, watch parts or watchmaking machines or any exporter or importer of watches, watch parts or watchmaking machines other than a person engaged in the sale of such products at retail to whom such defendant importer regularly sells its watches, watch parts or watchmaking machines or with any association of or for such manufacturers, exporters or importers to:

(A) Prevent, limit, restrict, or otherwise restrain or attempt to prevent, limit, restrict or otherwise restrain:

(1) The production of watches, watch parts or watchmaking machines in the United States;

(2) The exportation from or importation into the United States of watches, watch parts or watchmaking machines;

(3) The removal by the importer in the United States of the case, dial or hands from any watch imported by such person, if at the same time such importer removes the trade-mark of the manufacturer, or the determination of the type, quality or price

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of any case, dial or hands used by the importer in replacement therefor;

(B) Fix, maintain, establish or adhere to prices, discounts, markups, or other terms or conditions of sale of watches, watch parts or watchmaking machines to third persons in the United States;

(C) Maintain, disseminate or adhere to any list containing the names of persons in the United States dealing in watches, watch parts or watchmaking machines for the purpose or effect of preventing or attempting to prevent, any person from dealing with any persons so listed, in the purchase, sale or distribution of watches, watch parts or watchmaking machines;

(D) Refuse to sell or induce any other person to refuse to sell watches, watch parts or watchmaking machines to any customer in the United States solely by reason of such customer's pricing or sales policies;

(E) Refuse to deal or prevent others from dealing with any specific person in the purchase, sale or distribution of watches, watch parts or watchmaking machines for shipment within, to or from the United States;

(F) Prohibit, limit or otherwise prevent or attempt to prohibit, limit or prevent any specific United States person from:

(1) Dealing in the United States in specific brands, types or classes of watches, watch parts or watchmaking machines;

(2) Extending any managerial aid, or from extending any technical or industrial aid developed by such person or heretofore openly extended by such person to its affiliated company in the United States engaged or prepared to engage in the production of watches, watch parts or watchmaking machines;

(G) Refrain from engaging in the manufacture of watches, watch parts or watchmaking machines in the United States, from exporting watches, watch parts or watchmaking machines from the United States or from dealing in the United States in watches, watch parts or watchmaking machines produced in countries other than Switzerland on condition that financial, technical, managerial, or industrial aid be extended by any producer of watches in Switzerland;

(H) Require or coerce any United States person engaged in the sale of watch parts for repair or replacement purposes to adopt or use any designated identification system in the resale of such watch parts in the United States to the exclusion of any other identification system;

(I) Regulate or prevent the selection of any person in the United States as selling agent of a Swiss manufacturer of watches, or the selection of customers from whom such manufacturer's selling agent may solicit orders;

(J) Prevent, limit or restrict the sale or purchase on consignment of watches by any person in the United States, or otherwise require any such person to refrain from making sales or purchases on consignment in the United States;

(K) Require any person to offer or grant a specific guarantee on the sale of any watch in the United States, except that a defendant importer may require its customers (1) to include with any subsequent sale the guarantee offered by it or its manufacturer supplier and (2) to make clear that any guarantee by such customer in excess of the guarantee offered by such defendant importer or manufacturer supplier is solely the guarantee of such customer.

VI

[*Restraints of Trade—Coercion*]

Each defendant importer is enjoined from:

(A) Prohibiting, limiting or otherwise preventing or attempting to prohibit, limit or prevent:

(1) Any other importer in the United States from (a) removing in the United States the case, dial or hands from any watch imported by such importer if at the same time such importer removes the trade-mark of the manufacturer thereof, or (b) determining the type, quality or price of any case, dial or hands used in replacement therefor;

(2) Any person from importing into the United States watches, watch parts or watchmaking machines;

(3) Any person from exporting from the United States watches, watch parts or watchmaking machines purchased from said defendant importer;

(B) Coercing or compelling any importer in the United States to refrain from dealing in the United States in specific brands,

types or classes of watches, watch parts or watchmaking machines other than those sold by such defendant importer;

(C) Restricting or controlling:

(1) The use by any person in the United States of watch parts or watchmaking machines purchased from such defendant importer;

(2) The production by any person in the United States of watches, watch parts or watchmaking machines;

(D) Requiring or coercing any United States person engaged in the sale of watch parts for repair or replacement purposes to adopt or use any designated identification system in the resale of such watch parts in the United States to the exclusion of any other identification system;

(E) Refraining from:

(1) Engaging in the manufacture of watches, watch parts or watchmaking machines,

(2) Exporting watches, watch parts or watchmaking machines, or

(3) Dealing in watches, watch parts or watchmaking machines produced in countries other than Switzerland,

as a condition of receiving financial, technical, managerial or industrial aid from any producer of watches in Switzerland;

(F) Refusing to sell or inducing any other person to refuse to sell watches, watch parts or watchmaking machines to any customer in the United States solely by reason of such customer's pricing policies;

(G) Preventing or requiring others to prevent:

(1) Any person in the United States from dealing with any specific person in the purchase, sale or distribution of watches; or

(2) Any person from dealing with any specific person in the United States in the purchase, sale or distribution of watches;

or disseminating or adhering to or requiring adherence to any list, prepared by or in conjunction with any other person, having such purpose or effect; except that neither this subsection (G) nor Section V(C) shall apply to lists containing information respecting the credit standing of United States retailers of watches which are prepared by a bona fide independent service in the United States a normal function of which is to prepare and disseminate such information;

(H) Entering into any agreement or understanding with any reseller of watches, watch parts or watchmaking machines to fix or control the markup or the maximum or minimum price at which, the terms or conditions on which, or the customers to whom any such product may be resold;

(I) Requiring any person to offer or grant a specific guarantee on the sale of any watch in the United States, except that a defendant importer may require its customers (1) to include with any subsequent sale the guarantee offered by it or its manufacturer supplier and (2) to make clear that any guarantee by such customer in excess of the guarantee offered by such defendant importer or manufacturer supplier is solely the guarantee of such customer.

VII

[*Exchange of Information*]

Each defendant importer is enjoined from:

(A) Publishing or disseminating to any other person and from requiring or inducing any person to so publish or disseminate, for a period of ten years after the entry of this Final Judgment, any information regarding:

(1) The personnel, corporate ownership and specific customers of and commissions earned by any Swiss watch manufacturer's selling agent in the United States;

(2) The guarantee or repair policies employed by any other person engaged in the sale in the United States of Swiss watches or extended by any other person on specific brand name Swiss watches sold in the United States;

(3) The identity of specific customers to whom any other person sells specific brand name Swiss watches in the United States or to whom specific persons other than such defendant importers sell Swiss watches in the United States;

(B) Publishing or disseminating, directly or indirectly, to any person other than its manufacturer supplier any information relating to prices, suggested prices, discounts, markups or terms and conditions of sale of specific brand name watches or watch parts sold by any other person in the United States or of watches or watch parts sold by specific persons other than defendant importers in the United States; provided that such information as is published or disseminated to its manufacturer supplier is

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not published or disseminated for the purpose or effect of fixing or enforcing any minimum or maximum price, or any markup or other formula for computing the price to be charged in the United States by the importer or other reseller of watches, watch parts or watchmaking machines, and provided further that such information as is disseminated to such manufacturer supplier be accompanied by a statement that the information is for the sole use of such supplier and must not be communicated to any other person;

(C) Publishing or disseminating to any other person, or requiring or inducing any other person to so publish or disseminate, any rule or regulation (whether in the form of a bulletin or circular letter or otherwise) or information relating thereto, issued by FH or other person in Switzerland other than that part of such rule or regulation which establishes or refers to the sales prices or conditions of payment of watches, watch parts or watchmaking machines to be charged by, or which expressly relate to the quality or other physical characteristics of watches, watch parts or watchmaking machines manufactured by, the producers or exporters thereof in Switzerland.

Nothing in this Section VII shall be construed to prohibit any defendant importer from:

(1) Publishing or disseminating any information to any corporation incorporated in the United States and engaged in the production, sale or distribution of watches in the United States which is affiliated with such defendant by reason of unified ownership of more than 50% of the outstanding voting stock of such defendant importer and such affiliated corporation;

(2) Publishing or disseminating information relating to its own credit standing.

VIII

[*Directions for Compliance*]

(A) Each defendant importer is enjoined from:

(1) Maintaining, contributing to, furthering or supporting in any way any association or organization which said importer knows or should have known is engaging directly or indirectly in or furthering any activities contrary to any provision of this Final Judgment or a Companion Final Judgment;

(2) Discriminating or retaliating against any other defendant or United States person by reason of:

a. Violation by such other defendant of any provision of an agreement or understanding contrary to the provisions of this Final Judgment or of a Companion Final Judgment;

b. Such other person's activities expressly authorized to or required of such person by this Final Judgment or by a Companion Final Judgment;

(B) Each defendant importer is enjoined from:

(1) Entering into or enforcing any agreements or understandings with any manufacturer of watches, watch parts or watchmaking machines or adopting, adhering to or enforcing any bylaw, rule or regulation of any association or organization in the watch industry which might nullify or prevent performance by any signatory of any provisions of this Final Judgment or a Companion Final Judgment;

(2) Transferring voluntarily or assigning to any manufacturer or seller title to or ownership or control of any trade-mark, trade name or symbol for watches, watch parts or watchmaking machines sold in the United States unless such person in good faith agrees in writing in advance to refrain from taking any action prohibited to any manufacturer or seller by the provisions of this Final Judgment or a Companion Final Judgment;

IX

[*Permissive Provisions*]

Without passing upon the legality of any of the following, nothing in this Final Judgment shall be construed to prohibit any defendant importer from:

(A) Entering into and enforcing written agreements with its manufacturer supplier wherein such defendant importer may agree:

(1) To act as an exclusive distributor;

(2) To be primarily responsible for the distribution in a designated geographical area of watches or watch parts purchased from its manufacturer supplier;

(3) To refrain from the production of watches or watch parts of like quality to and in the same price range as those purchased from its manufacturer supplier;

(4) To refrain from dealing in specific brands, types or classes of watches or watch parts of like quality to and in the same price range as those purchased from its manufacturer supplier;

(B) Entering into, enforcing or cancelling sales contracts or resale price maintenance contracts for watches or watch parts executed in accordance with the provisions of such state and federal laws as may be applicable at the time or refusing to sell watches or watch parts to any customer whose resale prices therefor have been below the prices specified by such defendant importer in such a contract to which such customer is a party or with which he is required to comply in accordance with the provisions of such state and federal laws as may be applicable at the time;

(C) Exercising such rights as it may have under the law relating to customs, tariff, patents and trade-marks;

(D) Proposing, supporting or opposing changes in the customs, tariff or trade-mark laws of the United States or in any regulations issued thereunder;

(E) Entering into and enforcing agreements for the exclusive distribution of watches or watch parts sold by it containing provisions enumerated in subparagraphs (1)-(4) of subsection (A) herein;

(F) Exercising its individual right initially to select its customers on any basis and thereafter to conduct its business relations with such customers on the basis of any and all relevant factors other than the resale pricing policies of such customers, and even upon the basis of the resale pricing policies of such customers, if such customers refuse to enter into such resale price maintenance contracts as are permitted under subsection (B) herein, if such contracts are a prerequisite to compliance with such state and federal laws as may be applicable at the time;

(G) Acquiring the stock or assets of another person;

(H) Entering into, maintaining, performing and enforcing bona fide exclusive agreements with respect to specific types or styles of watches, watch parts or watch-making machines to be produced exclusively for such defendant importer by any other person according to the specifications and designs furnished by or prepared in conjunction with or exclusively for such defendant importer.

X

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and with a Companion Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to any defendant signatory hereto, mailed to its principal office, be permitted, subject to any privilege recognized by this Court:

(1) Access during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant or its subsidiaries relating to any matters contained in this Final Judgment or a Companion Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from such defendant to interview officers or employees of such defendant or its subsidiaries regarding any such matters, with counsel present;

(B) Defendant importers are ordered to:

(1) Submit to the plaintiff upon written request reports in writing with respect to any of the matters contained in this Final Judgment or in a Companion Final Judgment;

(2) Transmit a copy of this Final Judgment, within 60 days after entry thereof, to their respective manufacturer suppliers and thereafter to any person on whose behalf they act as exclusive distributor of watches or watch parts or to whom they transfer any trade-marks, trade names or symbols covering such watches or watch parts;

(C) Defendant Eterna is ordered to notify the Antitrust Division, during the three years after the entry of this Final Judgment, of each occasion when the President, Vice-President, Managing Director or Secretary of its parent in Switzerland plans to be in the United States;

(D) No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party, for the purpose of securing compliance with this Final Judgment or a Companion Final Judgment or as otherwise required by law.

XI

[*Jurisdiction Retained*]

(A) Jurisdiction is retained by this Court for the purpose of enabling any of the parties signatory to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the enforcement or compliance therewith, and for the punishment of violations thereof, and for the amendment or modification of any of the provisions thereof in the event that the existing business structure or functions of any defendant signatory or the administrative structure of the Swiss watch industry agreement known as the Collective Convention shall substantially change or in the event of any substantial change in economic conditions affecting the horological industry in the United States or Switzerland;

(B) In the event of a violation of this Final Judgment, plaintiff, in any enforcement proceeding, in addition to or in lieu of other and different relief, may apply to this Court for an order enjoining the importation into the United States of such watch products for such period of time as the Court may direct, or directing the removal of now existing prohibitions with respect to sales of watch parts to or by watch manufacturers, or enjoining any action which would prevent such sales; provided that this subsection (B) shall not be construed or interpreted as a determination or admission with respect to the power of the Court to grant such an order or with respect to the appropriateness or feasibility of such an order;

[*Companion Decrees*]

(C) In any proceeding brought under this Section XI the Court shall consider this Final Judgment in conjunction with the Companion Final Judgments; and any order entered in such proceeding may, in the discretion of the Court, be applied also to such other Companion Final Judgments and to the defendants signatory thereto provided due notice and an opportunity to be heard has been given to such defendants.

Final Judgment as to American Watch Association, Inc.

CASHIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 19, 1954, defendant signatory hereto having appeared and filed its answer to such complaint denying the substantive allegations thereof; and the plaintiff and the said defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party signatory hereto in respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties signatory hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter hereof and of the parties signatory hereto. The complaint states claims upon which relief may be granted against the defendant signatory hereto under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, entitled "An Act To reduce taxation, to provide revenue for the Government, and for other purposes", commonly known as the Wilson Tariff Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "AWA" means defendant American Watch Association, Inc.;

(B) "FH" means the defendant Federation Suisse des Associations de Fabricants d'Horlogerie;

(C) "Ebauches" means defendant Ebauches, S. A.;

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(D) "UBAH" means the Union des Branches Annexes de l'Horlogerie;

(E) "Watch" means any timing mechanism: (1) with a jewelled lever or cylinder escapement, or (2) operating by means of electric or electronic force, or (3) with an escapement which has metal pins instead of jewels at the lever either with or without a center wheel, which is designed to be worn or carried on the person, and includes also the movement without the case;

(F) "Watch part" means any component part (including the case) of a watch;

(G) "Watchmaking machine" means any machine designed to be used in the production of watches or watch parts;

(H) "Person" means an individual, partnership, firm, association or corporation, or any other business or legal entity;

(I) "United States person" means any person residing or incorporated or having a place of business, whether directly or through a parent or subsidiary, in the United States;

(J) "Technical aid" means managerial, financial, industrial or engineering assistance rendered by Swiss watch manufacturers to any person in the United States;

(K) "Manufacturer supplier" means the Swiss producer of the watches distributed in the United States by a member of AWA;

(L) "Companion Final Judgment" means any other Final Judgment heretofore or simultaneously herewith entered in this action by consent.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to AWA, its officers, directors, agents, servants, employees, successors, assigns and subsidiaries and to those persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Limiting Import and Export*]

AWA is enjoined from aiding or furthering, directly or indirectly, the execution or performance of any contract, agreement or understanding containing provisions which may limit the exportation from the United States or importation into the United States of watches or watch parts produced by the respective manufacturer suppliers of any member of AWA or which may prevent any such member from manufacturing or otherwise dealing in watches or watch parts which are not of like quality to and in the same price range as watches or watch parts purchased from its manufacturer supplier.

V

[*Restraints of Trade—Price Fixing*]

AWA is enjoined from entering into, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement, understanding, plan or program, with any other person to:

(A) Prevent, limit, restrict or attempt to prevent, limit or restrict:

(1) The production of watches, watch parts or watchmaking machines in the United States;

(2) The sale, use or distribution of watches, watch parts or watchmaking machines in the United States;

(3) The exportation from or importation into the United States of watches, watch parts or watchmaking machines;

(4) The removal in the United States of the case, dial or hands from any watch;

(B) Fix, maintain, establish or adhere to prices, discounts, mark-ups or other terms or conditions of sale or distribution of watches, watch parts or watchmaking machines;

(C) Refuse to deal or prevent others from dealing with any person in the purchase or sale of watches, watch parts or watchmaking machines for shipment to, within or from the United States.

VI

[*Restraints of Trade—Coercion*]

AWA is enjoined from:

(A) Prohibiting, limiting or otherwise preventing or attempting to prohibit, limit or prevent, or, by any means whatever, requiring or influencing others to prohibit, limit or prevent:

(1) Any United States person from engaging in the production of watches, watch parts or watchmaking machines in the United States;

(2) Any United States person from extending technical aid developed or heretofore openly extended by such person to its affiliated company in the United States engaged in or prepared to engage in the production of watches, watch parts or watchmaking machines in the United States;

(3) Any person in the United States from dealing in the United States in specific brands, types or classes of watches, watch parts or watchmaking machines;

(4) Any importer in the United States from removing in the United States the case, dial or hands from any watch;

(5) Any person from exporting from or importing into the United States watches, watch parts or watchmaking machines;

(B) Maintaining, disseminating or requiring adherence to any list containing the names of persons dealing in watches, watch parts or watchmaking machines for the purpose of, or having the effect of, preventing any person from dealing with any specific person so listed in the purchase, sale or distribution of watches, watch parts or watchmaking machines;

(C) Preventing or requiring or influencing others to prevent any person from dealing with any person in the purchase, sale or distribution of watches, watch parts or watchmaking machines;

(D) Restricting or regulating, or attempting to restrict or regulate, the use, channels of distribution or sale in the United States of watches, watch parts or watchmaking machines;

(E) Requiring or influencing others to refrain from:

(1) Engaging in the manufacture of watches, watch parts or watchmaking machines;

(2) Dealing in watches, watch parts or watchmaking machines produced in countries other than Switzerland; or

(3) Exporting watches, watch parts, or watchmaking machines;

in order to induce a manufacturer supplier to grant or extend technical aid to, or as a condition of receiving such aid from any manufacturer supplier;

(F) Agreeing to or taking any action, or adhering to any obligation to:

(1) Regulate or influence in any manner the choice of any person in the United States as selling agent of a Swiss manufacturer of watches or the selection of customers from whom such manufacturer's selling agent may solicit orders;

(2) Prevent, limit or restrict any person from selling watches on consignment;

(3) Require or influence, in any way whatsoever, any person to offer or grant a specific guarantee on the sale of any watch in the United States;

(4) Regulate or control the type, quality or price of any case, dial or hands to be used on watches sold in the United States;

(G) Inducing any person to refuse to sell watches, watch parts or watchmaking machines to any customer in the United States by reason of such customer's pricing or sales policies.

VII

[*Recommendations*]

AWA is enjoined from:

(A) Advising or recommending or seeking to induce any person to:

(1) Refrain from or limit the production in, or the export from or import into the United States of watches, watch parts or watchmaking machines;

(2) Refrain from dealing in specific brands, types or classes of watches, watch parts or watchmaking machines;

(3) Distribute watches through any specified channels or to any specified categories of retailers or customers;

(4) Refrain from removing the case, dial or hands from a watch produced in Switzerland;

(5) Utilize or offer any specified guarantee on the sale of any watch;

(6) Maintain, fix or establish any specified price, discount or mark-up on the sale of watches, watch parts or watchmaking machines;

(7) Adopt any plan, program or policy or promulgate any regulation, or make any recommendation, the purpose or effect of which is to eliminate or reduce price cutting in the United States, or to eliminate or control the customers to whom watches may be sold, except that defendant AWA, upon the specific request of a member of the AWA Association, may collect and

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solicit information relating to the credit standing of the United States customer or proposed customer of such requesting member, and may disseminate the results of such credit investigation to such requesting member, provided that such information is disseminated with an accompanying statement that the material furnished for information only and shall not be construed to require that such member refrain from dealing with the person with respect to whom the information is furnished;

(B) Sponsoring, calling, holding or participating in any meeting or conference for the purpose or with the effect of engaging in or furthering any activities inconsistent with any provision of this Final Judgment or a Companion Final Judgment;

(C) Publishing any bulletin or disseminating any information to its members or to any other persons relating to any plan, program or policy or any regulation, agreement or proposal of any Swiss watch industry organization or other person which is contrary to or inconsistent with any provision of this Final Judgment or a Companion Final Judgment;

(D) Participating in, assisting or making any recommendations in connection with any plan, program or policy or any regulation, agreement or proposal of any Swiss watch industry organization or other person which is contrary to or inconsistent with any provision of this Final Judgment or a Companion Final Judgment;

(E) Adopting or maintaining any policies respecting membership, eligibility or disqualification to regulate or influence:

(1) Pricing or sales policies relating to watches, watch parts or watchmaking machines;

(2) Customers to whom watches, watch parts or watchmaking machines are sold or delivered;

(3) Persons from whom or to whom watches, watch parts or watchmaking machines are purchased or sold;

(F) Entering into, collaborating in or sharing the financial cost of advertising, or public relations activities relating to watches, watch parts or watchmaking machines with FH, Ebauches, UBAH or similar foreign organizations representing the Swiss watch industry, provided, however, that nothing contained in this judgment shall otherwise prohibit AWA from acting as the representative of American Importers in Switzerland.

VIII

[*Publication of Information*]

(A) Defendant AWA is enjoined from collecting, soliciting, publishing or disseminating, and from requiring or inducing others to collect, solicit, publish or disseminate, any information regarding:

(1) The nature or amount of technical aid given by a Swiss manufacturer of watches or watch parts to any United States person;

(2) Any rule or regulation, bulletin or circular, whether in the form of a letter or otherwise issued by FH or by any other person in Switzerland relating to the manufacture, sale, distribution or use of watches, watch parts or watchmaking machines other than that part of such rule, or regulation, which establishes or refers to the sales prices and conditions of payment of watches, watch parts or watchmaking machines to be charged by, or which expressly relates to the quality or other physical characteristics of watches, watch parts or watchmaking machines manufactured by, the producers or exporters thereof in Switzerland;

(3) Commercial practices or business reputation of any specific United States person engaged in the production, purchase, or sale or distribution of watches, watch parts or watchmaking machines;

(4) Costs or suggested prices for specific watches, watch parts or watchmaking machines sold in United States domestic commerce or for export from the United States or for watches, watch parts or watchmaking machines sold by specific persons in United States domestic commerce or for export from the United States;

(5) Personnel, corporate ownership, customers of or commissions earned by selling agents of Swiss manufacturers in the United States.

(B) AWA is enjoined from publishing or disseminating, except in composite form, to its members or any other person or from requiring or influencing others to so publish or disseminate any information regarding:

(1) Sales in the United States of Swiss watches on consignment;

(2) Retail prices of watches sold in the United States;

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(3) The conduct of any specific person or distributor of any brand name watch as respects the guarantee or repair policies of such person in respect to Swiss watches.

(C) AWA is enjoined from collecting or soliciting, except by voluntary means, any information regarding the type or volume of watches, watch parts or watchmaking machines, manufactured, purchased, sold or distributed by any specific person and from publishing or disseminating such information, except in composite form, to its members or any other persons.

[*Permissive Provisions*]

Provided, however, that nothing in this Final Judgment shall be construed to prohibit AWA from:

(1) Furnishing to a member of defendant AWA, upon its specific written request, information relating to the credit standing of any customer or potential customer of such member requesting such information, provided such information is disseminated with an accompanying statement that the material furnished is for information only and shall not be construed to require that such member refrain from dealing with the person with respect to which the information was furnished;

(2) Presenting its views and making recommendations on behalf of its members to Congressional Committees and administrative agencies in regard to tariffs, excise taxes, customs and similar matters affecting the interests of AWA.

IX

AWA is enjoined from:

(A) Contributing to, furthering or supporting in any way, any association or organization which AWA knows or should have known to be directly or indirectly engaging in or furthering any activities contrary to any provision of this Final Judgment or a Companion Final Judgment;

(B) Taking any action to impose or permit the imposition of any penalty of any kind upon, or discriminate or permit such discrimination against any person by reason of:

(1) Violation by such person of any provision of an agreement or understanding inconsistent with any provision of this Final Judgment or a Companion Final Judgment;

(2) Such person's activities expressly authorized to or required of such person by this Final Judgment or a Companion Final Judgment.

X

[*Directions for Compliance*]

(A) Defendant AWA is ordered:

(1) To give to each present and future member of AWA a copy of this Final Judgment and to inform each present and future member that AWA is bound by the provisions of this Final Judgment;

(2) To require each committee established by AWA or under its auspices, which is empowered to consider any of the following matters, to maintain minutes of each meeting of such committee and to prepare annually a report on the activities of such committee:

(a) Members' complaints or commercial disputes to which any member is a party;

(b) Market conditions, distribution channels, advertising policies and sales practices concerning watches, watch parts or watchmaking machines;

(c) Trade practices in the United States and Switzerland;

(d) Smuggling:

(e) Relations between Swiss and United States watch industries;

(3) To cause the following statement to be made a part of its by-laws:

AWA is bound by and has agreed to adhere to all of the provisions of the Final Judgment entered into between defendant AWA and the United States Department of Justice, and membership (in this Association) may not be used as a means, either directly or indirectly, of carrying out any activity prohibited to defendant AWA by the terms of the above referred to Final Judgment. Members who use their membership in this Association to engage in activities prohibited by this Final Judgment shall, upon this fact being established to AWA's satisfaction, be liable to having their membership cancelled; a statement of the facts and circumstances of such member's activities will be filed with the Department of Justice;

AWA is enjoined from adopting, adhering to or enforcing any by-law, rule or regulation, or being a party to any agree-

ment or understanding, the purpose or effect of which is contrary to any provision of this Final Judgment or a Companion Final Judgment.

XI

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and with the Companion Final Judgments, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to the defendant signatory hereto, be permitted, subject to any privilege recognized by this Court:

(1) Access during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment or a Companion Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from such defendant, to interview officers or employees of such defendant who may have counsel present, regarding any such matters.

(B) AWA is ordered to submit to the plaintiff upon written request reports in writing with respect to any of the matters contained in this Final Judgment or in a Companion Final Judgment.

(C) No information obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party, for the purpose of securing compliance with this Final Judgment or a Companion Final Judgment or as otherwise required by law.

XII

[*Jurisdiction Retained*]

(A) Jurisdiction is retained by this Court for the purpose of enabling any of the parties signatory to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification, construction or carrying out of this Final Judgment, for the enforcement or compliance therewith, and for the punishment of violations thereof, and for the amendment or modification of any of the provisions thereof in the event that the existing business structure or functions of the defendant signatory shall substantially change or in the event of any substantial change in economic conditions affecting the horological industry in the United States or Switzerland.

(B) In the event of a violation of this Final Judgment, plaintiff, in any enforcement proceeding, in addition to or in lieu of other and different relief, may apply to this Court for an order enjoining the importation into the United States of such watch products, for such period of time as the Court may direct, or directing the removal of now existing prohibitions with respect to sales of watch parts to or by watch manufacturers, or enjoining any action which would prevent such sales; provided that this subsection shall not be construed or interpreted as a determination or admission with respect to the power of the Court to grant such an order or with respect to the appropriateness or feasibility of such an order.

[*Companion Decrees*]

(C) In any proceeding brought under this Section XII, the Court shall consider this Final Judgment in conjunction with the Companion Final Judgments; and any order entered in such proceeding may, in the discretion of the Court, be applied also to such other Companion Final Judgments and to the defendants signatory thereto provided due notice and an opportunity to be heard has been given to such defendants.

Final Judgment as to Foote, Cone & Belding, Inc.

CASHIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 19, 1954, and all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and the plaintiff and the defendant Foote, Cone & Belding, Inc., by their attorneys herein, having severally consented to the entry of this Final Judgment herein without trial or final adjudication of any issue of fact or law herein, and without admission by any party signatory hereto in respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and without trial or final adjudication of any issue of fact or law herein, and upon the consent of the parties signatory hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter hereof and of the parties signatory hereto. The complaint states claims upon which relief may be granted against the defendant signatory hereto under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, and under Section 73 of the Act of Congress of August 27, 1894, as amended, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", commonly known as the Wilson Tariff Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendant" refers to the defendant Foote, Cone & Belding, Inc.;

(B) "Watch" means any timing mechanism (1) with a jewelled lever or cylinder escapement, or (2) operating by means of an electric or electronic force, or (3) with an escapement which has metal pins instead of jewels either with or without a center wheel and includes also the movement without the case, which is designed to be worn or carried on the person;

(C) "Watch part" means any component part (including the case) of a watch with a jewelled lever or cylinder escapement or operating by means of an electric or electronic force;

(D) "Watchmaking machine" means any machine designed to be used in the production of watches or watch parts;

(E) "United States person" means any person residing or incorporated or having a place of business, whether directly or through a parent or subsidiary, in the United States;

(F) "Companion Final Judgment" means any other Final Judgment entered in this action.

III

[*Restraint of Trade—Price Fixing*]

Defendant is enjoined from entering into, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement, understanding, plan or program, with any other person to:

(A) Prevent, limit, restrict or attempt to prevent, limit or restrict:

(1) The production of watches, watch parts or watchmaking machines in the United States;

(2) The sale, use and distribution of watches, watch parts or watchmaking machines in United States domestic commerce;

(3) The exportation from the United States or the importation into the United States of watches, watch parts or watchmaking machines;

(B) Determine or otherwise influence the terms or conditions under which:

(1) Any person shall produce watches, watch parts or watchmaking machines in the United States;

(2) Any person shall sell, use or distribute watches, watch parts or watchmaking machines in the United States;

(3) Any person shall export from or import into the United States watches, watch parts or watchmaking machines;

(C) Fix, maintain, stabilize or adhere to prices, discounts, markups or other terms or conditions of sale or distribution of watches, watch parts and watchmaking machinery;

(D) Refuse to deal or require, cause or induce any person to refuse to deal with any specific persons in the purchase or sale of watches, watch parts or watchmaking machines.

IV

[*Advertising Activities*]

Defendant is enjoined from:

(A) Advertising or engaging in promotional work or other public relations activities for or on behalf of any association of

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Swiss manufacturers of watches or of any organization representing such manufacturers or association, which are designed to induce or influence the people in the United States to purchase Swiss watches only through retail jewelers, unless such advertisements or promotional work or other public relations activities are also designed to inform the people in the United States that there are sources other than retail jewelers from whom such Swiss watches may be purchased in the United States;

(B) Furnishing for or on behalf of any association of Swiss manufacturers of watches or of any organization representing such manufacturers or association, advertising or promotional material to United States retail watch dealers on a basis which discriminates against any type or class of such dealers.

V

[*Directions for Compliance*]

Defendant is enjoined from discriminating or retaliating in any way whatsoever, or from inducing or causing others to discriminate or retaliate against any defendant or any United States person by reason of such person's engaging in conduct specifically required or authorized under this Final Judgment or a Companion Final Judgment.

VI

[*Exchange of Information*]

(A) Defendant is enjoined from publishing or disseminating any of the following types of information relating to activities and conduct of specific individual members of the watch industry:

(1) Type and volume of watches, watch parts and watchmaking machines manufactured, purchased, sold or distributed by any specifically designated person in the United States;

(2) Costs, prices, suggested prices, discounts, markups or terms and conditions of sale for specific watches, watch parts or watchmaking machines sold in the United States or for watches, watch parts or watchmaking machines sold by specifically designated persons in the United States;

(3) Business conduct of any specifically designated person or distributor in the United States of any specific brand name watch as respects pricing, sales on consignment, guarantees or distribution outlets used; or business conduct respecting pricing, sales on consignment, guarantees or distribution outlets used for designated watches, watch parts or watchmaking machines sold in or exported from the United States;

(4) Commercial practices or business reputation of any specifically designated person in the United States engaged in the production, purchase, sale or distribution of watches, watch parts or watchmaking machines;

Provided that nothing herein contained in this Section VI(A) is to be construed as enjoining defendant from publishing or distributing or otherwise using in composite form any of the foregoing in line with its normal business as an advertising agency.

(B) Defendant is enjoined from collecting or disseminating any information respecting:

(1) Any rule, regulation, bulletin or circular of Federation Suisse des Associations de Fabricants d'Horlogerie, Ebauches, S. A., or any person in Switzerland representing the Swiss watch industry relating to the Swiss watch industry except such parts thereof as expressly establish the sales price or conditions of payment of watches, watch parts or watchmaking machines to be charged by the producers or exporters thereof in Switzerland;

(2) Any blacklist containing the names of persons who shall not purchase or receive Swiss watches, watch parts or watchmaking machines.

VII

[*Permissive Provisions*]

Nothing contained in this Final Judgment shall be construed to prohibit or enjoin the defendant from advising, consulting with or reporting to any client concerning or participating with any client in the sale, distribution, pricing and marketing of its client's own products.

It is provided further that for a period of five (5) years defendant may not at the same time represent more than one Swiss manufacturer of watches, but the foregoing limitation shall not apply to the representation of importers or American manufacturers.

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VIII

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and the Companion Final Judgments duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Anti-trust Division, on reasonable notice to defendant, be permitted, subject to any privilege recognized by this Court:

(1) Access during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment or a Companion Final Judgment;

(2) Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant who may have counsel present, regarding any such matters.

(B) Defendant is ordered to submit to the plaintiff upon written request reports in writing with respect to any of the matters contained in this Final Judgment or in a Companion Final Judgment.

(C) No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice, to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party, for the purpose of securing compliance with this Final Judgment or a Companion Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

(A) Jurisdiction is retained by this Court for the purpose of enabling the parties signatory to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification, construction or carrying out of this Final Judgment, and for the enforcement or compliance therewith, for the punishment of violations thereof; and for the amendment or modification of any of the provisions thereof in the event that Federation Suisse des Associations de Fabricants d'Horlogerie or Ebauches, S. A., shall substantially change their existing business functions or the administrative structure of the Convention or in the event of any substantial change in economic conditions affecting the horological industry in the United States or Switzerland.

[*Companion Decrees*]

(B) In any proceeding brought under this Section IX, the Court shall consider this Final Judgment in conjunction with the Companion Final Judgments; and any order entered in such proceeding may, in the discretion of the Court, be applied also to such other Companion Final Judgments and to the defendants signatory thereto provided due notice and an opportunity to be heard has been given to such defendants.

[¶ 69,656] United States v. Seymour S. Hindman.

In the United States District Court for the District of New Jersey. Civil Action No. 450-59. Dated January 15, 1960.

Federal Trade Commission Act

Federal Trade Commission Enforcement and Procedure—Suit for Civil Damages for Violation of FTC Order—Motions for Summary Judgment—"Custom-Tailored" and "Custom-Made" Military Uniforms.—A seller of military uniforms, in a Government suit to recover civil damages for violation of an FTC cease and desist order, would be permitted to show that the labeling of his uniforms as "custom-tailored" does not violate an order which prohibited him from representing that they were "custom-made." Thus, the court denied summary judgment for the Government on this point.

See Federal Trade Commission Enforcement and Procedure, Vol. 2, ¶ 8661.

Unfair Practices—Jurisdiction and Power of Commission—Suit for Civil Damages for Violation of FTC Order—Motions for Summary Judgment—Labels as Representations.—