
United States District Court
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 96-170

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE WATCHMAKERS OF SWITZERLAND INFORMATION
CENTER, INC., ET AL.,

Defendants.

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

United States District Court
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

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-WITTLNAUER WATCH COMPANY; GRUEN WATCH MANUFACTURING COMPANY, S. A.; ETERNA, A. G. UHRENFABRIK; WITTLNAUER ET CIE, S. A.; MONTRES ROLEX, S. A.; CONCORD WATCH CO.; ETERNA WATCH COMPANY OF AMERICA; DIETHELM AND KELLER (USA) LTD.; THE AMERICAN ROLEX WATCH CORPORATION; RODANA 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.; WYLER WATCH AGENCY, INC.,

Defendants.

Civil Action
No. 96-170

FINAL JUDGMENT

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 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

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

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

(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

(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

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 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

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

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 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 condi-

tions of payment of watches, watch parts or watchmaking machinery to be charged by, or which expressly relate to the quality or 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 defendant importer from:

(1) Publishing or disseminating any information to any corporation incorporated in the United States and engaged in 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 defendant importer and such affiliated corporation;

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

VIII

(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 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 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

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 watchmaking 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

(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

(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;

(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.

Dated: March 9, 1960

JOHN M. CASHIN
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

ROBERT A. BICKS
Robert A. Bicks
Acting Assistant Attorney General

W. D. KILGORE, JR.
William D. Kilgore, Jr.

BADDIA J. RASHID
Baddia J. Rashid

RICHARD B. O'DONNELL
Richard B. O'Donnell

Attorneys, Department of Justice

MARY GARDINER JONES
Mary Gardiner Jones

MAX FREEMAN
Max Freeman

W. LOUISE FLORENCOURT
W. Louise Florencourt

CARL L. STEINHOUSE
Carl L. Steinhouse

ELLIOTT H. FELDMAN
Elliott H. Feldman

ELHANAN C. STONE
Elhanan C. Stone

Attorneys, Department of Justice

For the Defendants:

ETERNA WATCH Co. OF AMERICA, INC.
by its attorneys:

ROBERT PERRET
Robert Perret

SOLINGER & GORDON, of counsel

by Eugene H. Gordon
A member of the above firm

DIETHELM AND KELLER (USA) LTD.
by its attorneys:

GOODWIN, DANFORTH, SAVAGE &
WHITEHEAD

by William F. Clare, Jr.
A member of the above firm

CONCORD WATCH Co., INC.
MOVADO WATCH AGENCY, INC.
by their attorney:

ALBERT LEE SINGER
Albert Lee Singer

JEAN R. GRAEF, INC.
THE HENRI STERN WATCH AGENCY,
INC.
THE AMERICAN ROLEX WATCH COR-
PORATION

by their attorneys:

LIPPER, SHINN & KEELEY

by Aaron Lipper
A member of the above firm

WYLER WATCH CORPORATION
by its attorney:

MURRAY SPRUNG
Murray Sprung

by Arthur W. Lichtenstein

RODANIA WATCH COMPANY, INC.
by its attorney:

MILTON W. LEVY
Milton W. Levy

NORMAN M. MORRIS CORPORATION
by its attorney:

DAVID BAUMGARTEN
David Baumgarten

CYMA WATCH Co., INC., now known
as Berco, Inc.
by its attorneys:

GUGGENHEIMER & UNTERMYER

by Edward First
A member of the above firm