FEDERAL TRADE COMMISSION

v.

JOSEPH L. BERK AND LEON G. BERK, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BERK BROS.

COMPLAINT IN THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 561—May 13, 1920.

SYLLABUS.

Where a firm engaged in the sale of fountain pens printed upon the outside of the containers, "The Standard Self Filling Fountain Pen, $1.50," the fact being that such fountain pens were never sold for more than 25 cents, and that the retail price was not, nor was intended to be, more than 25 cents; with the result that the trade and the purchasing public were thereby misled:

Held, That such false and misleading labeling, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., hereinafter referred to as the respondents, have been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would

be to the interest of the public issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Joseph L. Berk and Leon G. Berk, are copartners doing business under the firm name and style of Berk Bros., with their principal office and place of business located in the city and State of New York, now and at all times hereinafter mentioned engaged in the business of selling fountain pens throughout various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of their business aforesaid, respondents sell and transport fountain pens to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens between and among different States of the United States.

PAR. 3. That within the two years last past the respondents have sold in commerce aforesaid fountain pens in boxes or containers upon the outside of which was printed or stamped the words "The Standard Self-Filling Fountain Pen $1.50"; that such fountain pens were never sold for more than 25 cents and the effect of such printing or stamping has been and is to mislead purchasers, the trade, and the general public into the belief that the retail price of such fountain pens is $1.50, when in truth and in fact it is never more than 25 cents.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., having filed their answer, admitting that all the allegations of said complaint and each count and paragraph thereof are true in the manner and form therein set forth, and consenting and agreeing that the Federal Trade Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its conclusion, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument:

Therefore, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Joseph L. Berk and Leon G. Berk are copartners, doing business under the firm name and style of Berk Bros., with their principal office and place of business located in the city and State of New York, now, and at all times hereinafter mentioned, engaged in the business of selling fountain pens throughout the various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of their business aforesaid, respondents sell and transport fountain pens to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens between and among the different States of the United States.

PAR. 3. That for more than one year last past the respondents have sold in commerce aforesaid fountain pens in boxes or containers upon the outside of which was printed or stamped the words "The Standard Self-Filling Fountain Pen, $1.50"; that such fountain pens were never sold for

more than 25 cents, and the retail price of such fountain pens is not and is not intended to be more than 25 cents; that the effect of such printing or stamping on the boxes or containers in which the fountain pen is sold to the public has been and is to mislead purchasers, the trade, and the general public into the belief that the retail price of such fountan pen is $1.50, when in truth and in fact, it is never more than and is not intended to be more than 25 cents.

PAR. 4. That the effect of the acts and practices in the manner and form above mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondents in the conduct of their business.

CONCLUSION.

That the method of competition set forth in the foregoing findings of facts in paragraph 3 is under the circumstances therein set forth an unfair method of competition in interstate commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., having filed their answer, in which they consented and agreed that the Federal Trade Commission shall proceed forthwith upon the same, and make and enter its report stating its findings as to the facts, its conclusions and its order, without the introduction of testimony and waiving any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion, that the respondents have violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its

powers and duties, and for other purposes," which said report is herein referred to and made a part hereof: Now,

It is ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., their agents, representatives, servants, and employees cease and desist from directly or indirectly:

Stamping, printing, or otherwise marking on boxes or containers in which fountain pens are sold, a fictitious and misleading price, known to be in excess of the price at which such pens are usually sold at retail.

It is further ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., shall within 60 days from the date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

W. G. HANSON, DOING BUSINESS UNDER THE NAME AND STYLE OF THE MERCANTILE & FINANCIAL TIMES PUBLISHING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 502.—May 20, 1920.

SYLLABUS.

Where an individual engaged in the printing and sale of a publication never offered to the public generally nor sent through the mails, but purporting to be a regular mercantile and financial periodical; with the purpose of misleading the public as to the true character of said publication;

Closely simulated the appearance of a regular mercantile and financial periodical, by the inclusion of a large number of free advertisements of reputable financial concerns, inserted without their knowledge; by the inclusion of matter purporting to be mercantile and financial news articles and editorials, but in fact solicited advertisements constituting the publication's sole source of income, and paid for by the purchase of a definite number of copies of the particular issue; and by make-up and style of printing: