

Complaint.

FEDERAL TRADE COMMISSION

v.

N. SHURE COMPANY.

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

Docket 687—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of jewelry, notions, etc., and of cheap fountain pens packed in individual containers bearing the legend "Price \$1.50," which was a fictitious and exaggerated price, sold the same so packed to dealers who resold them to the public at prices many times in excess of their cost; with the effect of misleading purchasers and the general public into believing such price to be the usual retail price and of enabling, encouraging and aiding dealers to defraud the public by obtaining excessive prices, and, by selling at less than the figure indicated, to mislead and deceive purchasers into believing that a higher grade of pen was being sold at a reduced price:

Held, That such mislabeling, or misrepresentations of price, under the circumstances set forth, constituted an unfair method of competition.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that N. Shure Company has been and is using unfair methods of competition 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 it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is a corporation organized under the laws of the State of Illinois, with principal place of business at Chicago, in said State.

PAR. 2. That respondent is engaged in the business of selling at wholesale, jewelry, notions, etc., and causes same to be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business, as described in Paragraph 2. hereof, sells at wholesale fountain pens manufactured by it, which pens it packs singly in containers upon which it

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conspicuously prints what purports to be proposed resale prices, but which prices are false, fictitious and misleading in that such prices are greatly in excess of the prices at which respondent and its vendees contemplate that said pens will be resold, and are greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; and such pens are sold by respondent, packed in the containers marked as aforesaid, with full knowledge that such marks are to be used for the purpose of misleading and deceiving the purchasing public and inducing them to purchase said pens, when offered for sale at prices substantially below those printed on said containers, upon the mistaken belief that said pens are being sold at a greatly reduced price; that among pens so sold by respondent, at prices ranging from 12 cents and 15 cents each are pens placed in containers upon which the respondent prints "Price \$3.00," and that in selling the pens in containers so marked the respondent comes in direct competition with other manufacturers of pens who do not mark their product with such false, fictitious and misleading price marks, and the said respondent by the means aforesaid aids, abets and assists its customers to whom it sells its pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers marked with such false, fictitious and misleading price marks.

PAR. 4. That by reason of the facts recited, the respondent has been and is using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent, N. Shure Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondent having entered its appearance and filed its answer herein, admitting that all of the allegations of said complaint and each count and paragraph thereof are true in the manner and form therein set forth, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its

findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, N. Shure Company, is a corporation organized under the laws of the State of Illinois with principal office and place of business at the City of Chicago, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling at wholesale jewelry, notions, novelties, fountain pens, etc., throughout the various States of the United States, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That in the conduct of its business as aforesaid, respondent sells and transports fountain pens, packed in individual boxes or containers, to customers in different States of the United States, causing the same to pass from the State of Illinois through and into other States of the United States, and there is and has been at all times hereinafter mentioned, a constant current of trade and commerce of such fountain pens, packed in boxes as aforesaid, between and among the different States of the United States.

PAR. 3. That within one year last past, respondent has sold at wholesale, in commerce as aforesaid, throughout the United States, low-priced fountain pens at prices ranging from \$17.50 to \$21.50 per gross, said pens being packed in individual boxes or containers, on which boxes or containers is stamped or marked "Price \$3.00."

PAR. 4. That such resale prices are not bona fide but placed on such boxes for the purpose of enabling the retail dealer to represent to the ultimate consumer that such pens are of high grade and reasonably worth the false and fictitious price marked on such boxes.

PAR. 5. That respondent sells said fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, to dealers who resell them to the public at prices many times in excess of the cost price of said pens.

PAR. 6. That the sale by respondent to dealers of cheap fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, is calculated to, and does, enable dealers in said pens to defraud the purchasing public by obtaining for such pens prices greatly in excess of the

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cost price of said pens; that said pens are sold by some dealers at prices below those indicated on the boxes or containers, and the prices so indicated mislead and deceive the purchasing public into believing that a higher grade of pen is being sold at a reduced price; and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the real value of said pens.

PAR. 7. That the effect of printing or stamping of fictitious or exaggerated prices on the boxes or containers in which fountain pens are packed and sold by respondent to dealers, who resell them to the public as aforesaid, has been and is to mislead purchasers and the general public into the belief that the retail price of said fountain pens is the price stamped or marked on the box or container.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress, approved Sept. 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission, the answer of the respondent and a stipulation of facts entered into on behalf of the commission and the respondent, in which stipulation of facts respondent waived its right to presentation of oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions 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,"

It is now ordered, That the respondent, N. Shure Company, its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

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

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(2) Selling or supplying its customers with individual boxes or containers, made to contain fountain pens, or selling fountain pens packed in individual boxes or containers, on which said boxes or containers is stamped, printed or otherwise marked a fictitious, exaggerated, or misleading price, known to be in excess of the price at which such pens are intended to be and usually are sold at retail.

And it is further ordered, That said respondent, N. Shure Company, shall within thirty (30) 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.

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