

FEDERAL TRADE COMMISSION

v.

MYER LEVIN, MORRIS L. LEVIN, ISAAC P. LEVIN AND
MAX LEVIN, PARTNERS, STYLING THEMSELVES
LEVIN BROTHERS.

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

Docket 668—January 7, 1922.

SYLLABUS.

Where a firm engaged in the sale of jewelry, notions, etc., and of cheap fountain pens, sometimes packed in, and sometimes sold with, individual containers therefor bearing the legend "Price \$3.00," which was a fictitious and exaggerated price,

- (a) Sold said pens, as above set forth, to dealers who packed them in said containers, when not already so packed, and 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 the price so indicated 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 reduced price;
- (b) Sold pens with the pen points marked "14 K GOLD PLATED" and so inserted that the last two words were hidden by the barrel of the pen, with the effect of misleading the purchasing public into believing said points to be made of 14-karat gold, and of enabling dealers thereby to defraud it:

Held, That such mislabeling, or misrepresentation of price, and such misbranding, under the circumstances set forth, constituted unfair methods of competition.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners styling themselves Levin Brothers, hereinafter referred to as respondents, have been and 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 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 the respondents are partners and style themselves Levin Brothers, and have their principal place of business at Terre Haute in the State of Indiana.

PAR. 2. That respondents are engaged in the business of selling jewelry, notions, novelties, etc., including fountain pens, and cause same to be transported to the purchasers thereof, from the State of Indiana, through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondents in the course of their business, as described in Paragraph 2 hereof, sell at wholesale fountain pens, which pens they pack singly in containers upon which they conspicuously print 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 respondents and their 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 respondents, 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 11 cents to 50 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 respondents come in direct competition with manufacturers of pens and other dealers in pens who do not mark their product with such false, fictitious and misleading price marks, and respondents by the means aforesaid aid, abet and assist their customers to whom they sell 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 respondents further, in the course of their business as described in Paragraphs 2 and 3 hereof, issue annually a catalogue in which many of the articles sold by them are described at length; that in the 1919-1920 catalogue issued by respondents and distributed generally to the trade, certain of the fountain pens offered for sale by respondents were described as "Goldine" and were equipped with pen points which were stamped "14 K Gold Plated" but had the points so inserted that the words "Gold Plated" were hidden, in such manner as to be likely to create the false im-

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pression that such pen points were made of 14 K. gold; that respondents, by said means aid, abet and assist their customers, to whom they sell such fountain pens, in using unfair methods of competition against others similarly engaged, but who do not sell fountain pens fitted with similar points stamped as aforesaid.

PAR. 5. That by reason of the facts recited, the respondents have been using an unfair method 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 respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners, styling themselves Levin Brothers, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance by their attorney, Harry J. Baker, Esq., and filed their answer herein, admitting that all the allegations of said complaint and amended 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 respondents 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 respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin, and Max Levin, partners, styling themselves Levin Brothers, with their principal place of business at the City of Terre Haute, State of Indiana, are now, and at all times hereinafter mentioned have been, engaged in the business of selling 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 their business as aforesaid, respondents sell and transport fountain pens, and boxes made to contain fountain pens, to customers in different States of the United States causing the same to pass from the State of Indiana 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 and boxes made to contain such fountain pens, between and among the different States of the United States.

PAR. 3. That within two years last past, respondents have sold at wholesale in commerce as aforesaid, fountain pens at prices ranging from \$16.50 per gross to \$6.00 per dozen, said pens being packed in individual boxes or containers, on which boxes or containers is stamped or marked "Price \$3.00." Respondents have also within the two years last past, sold at wholesale, in commerce as aforesaid, fountain pens, and individual boxes or containers made to contain said fountain pens, said boxes or containers being 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 respondents sell said fountain pens, either packed in individual boxes or containers, or in bulk, and sell or furnish at the same time said boxes or containers, in either case being stamped or marked with a fictitious or exaggerated price as aforesaid, to dealers who pack said pens in said individual boxes or containers, if necessary, and resell them to the public at prices many times in excess of the cost prices of said pens.

PAR. 6. That the sale by respondents to dealers of cheap fountain pens, packed in individual boxes or containers, stamped or marked with a fictitious or exaggerated price as aforesaid, or the sale of said fountain pens, and at the same time selling or supplying individual boxes or containers for said pens, said boxes or containers being 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 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 respondents encourage, aid and abet said dealers in misleading or deceiving the public as to the real value of said pens.

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PAR. 7. That the effect of such printing or stamping of fictitious or exaggerated prices on individual boxes or containers in which fountain pens are packed for sale 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 on the box or container.

PAR. 8. That within two years last past, respondents have offered for sale and sold at wholesale, in commerce as aforesaid, certain fountain pens, in which pens are inserted pen points stamped or marked "14K Gold Plated", said pen points being inserted in the holders in such a way that the words "Gold Plated" were hidden, leaving the symbol "14K" visible; that the symbol "14K" has acquired a meaning in the public mind which indicates that pen points upon which this symbol appears are made of 14 karat gold; that the sale of fountain pens by respondents in which are inserted pen points bearing the words "14 K Gold Plated," with the words "Gold Plated" hidden by the barrel of the fountain pen, is calculated to, and does, create the false impression in the minds of the purchasing public that such points are made of 14 karat gold, and enables the dealers to whom respondents sell such fountain pens to mislead and defraud the purchasing public.

CONCLUSION.

The practices of 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 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint and the amended complaint of the Commission, and agreed statement of facts filed herein, 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 respondents, Meyer Levin, Morris L. Levin, Isaac P. Levin and Max Levin, partners, styling themselves Levin Brothers, their agents representatives, servants and employees, do cease and desist from directly or indirectly:

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(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.

(2) Selling or supplying their customers with individual boxes or containers made to contain fountain pens, 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.

(3) Selling or disposing of fountain pens in which are inserted gold-plated pen points upon which pen points are stamped or otherwise marked, the words "14K Gold Plated," the arrangement of these words being such that the words "Gold Plated" are obscured by the barrel or holder of the pen, leaving the symbol "14K" visible.

And it is further ordered, That said respondents 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 they have complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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v.

JAMES KELLEY.