

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

JAMES KELLEY.

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

Docket 670—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of cheap fountain pens and of individual containers therefor, bearing the legends, "Price \$1.00", "Price \$1.50" or "Price \$3.00", which were fictitious and exaggerated prices, sold the same to peddlers, street fakers and other dealers who packed them in said containers and resold them to the public at prices many times in excess of their cost and often at the prices so indicated, knowing that said peddlers, etc., intended so to do; with the effect of misleading purchasers and the general public into believing the prices so indicated to be the usual retail prices, and of enabling, encouraging and aiding said peddlers etc. to mislead the public as to the real value of said pens:

Held, That such mislabeling, or misrepresentation 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 James Kelley 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 engaged in the business of selling various specialties including fountain pens at wholesale, with principal place of business at New York, N. Y., and causes pens sold by him to be transported to the purchasers thereof, from the State of New York, through and into various other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent in the course of his business, as described in Paragraph 1 hereof, sells at wholesale fountain pens, which pens he packs singly in containers or said pens are sold in bulk and the purchasers thereof are furnished containers which are suitable for use by such purchasers for enclosing such pens therein, when offered

for sale at retail, and such containers are furnished by respondent for that purpose, and upon such containers respondent 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 his 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, either in bulk or packed in 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 8¢ to 18¢ each, are pens placed in containers upon which the respondent prints "Price \$1.00," "Price \$1.50," and "Price \$3.00," or when said pens are sold in bulk the purchasers are furnished containers for use in the sale of said pens at retail, as aforesaid, and such containers have said price marks printed thereon; that in selling the pens, as aforesaid, respondent comes in direct competition with manufacturers of pens and other dealers in pens, who do not enclose pens sold by them in containers upon which are printed false, fictitious and misleading price marks, or furnish such containers for use in the sale of said pens at retail; that respondent by the means aforesaid, aids, abets, and assists his customers to whom he sells pens, in using unfair methods of competition against others similarly engaged, but who do not sell their pens in containers upon which are printed false, fictitious and misleading price marks.

PAR. 3. That by reason of the facts recited, the respondent has 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 respondent, James Kelley, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent having entered his appearance and filed his answer herein, admitting that certain of the methods and things alleged in

Findings.

4 F. T. C.

said complaint 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 the 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 with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, 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 the respondent, James Kelley, is now and at all times hereinafter mentioned has been engaged in the business of selling fountain pens and boxes made to contain 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 his business aforesaid, respondent sells and transports fountain pens and boxes made to contain 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 of such fountain pens and boxes to contain such fountain pens between and among the different States of the United States.

PAR. 3. That within two years last past, respondent has sold at wholesale, in commerce as aforesaid, low-priced fountain pens at prices ranging from \$12.50 to \$25.00 per gross, and has supplied with or sold to purchasers of said fountain pens, boxes or containers for said low-priced fountain pens, on which boxes or containers were stamped or branded "Price \$1.00" or "Price \$1.50" or "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 prices marked on such boxes.

PAR. 5. That respondent sells said pens to peddlers, street fakers and other dealers, and that said purchasers pack the pens in said boxes or containers and resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or branded on said boxes furnished to said peddlers, street fakers and other dealers by respondent, as aforesaid.

188

Order.

PAR. 6. That the effect of such branding or stamping of fictitious or exaggerated prices on the boxes or containers supplied or sold by respondent, in which fountain pens are sold 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. 7. That respondent at the time of selling said low-priced fountain pens, and selling or furnishing the said boxes or containers, stamped or branded with fictitious prices as aforesaid, knew that said peddlers, street fakers, and other dealers intended to pack said pens in the boxes so sold or furnished by respondent at the time of sale and resell them to the public at the prices stamped or branded on the boxes, or at other prices many times in excess of the cost price of said pens, as aforesaid, and respondent thereby encourages, aids and abets such peddlers, street fakers, and other dealers in misleading the public as to the real value of said pens.

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 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 respondent, James Kelley, his 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.

Order.

4 F. T. C.

2. Selling or supplying his 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.

It is further ordered, That said respondent, James Kelley, 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 he has complied with the order of the Commission herein set forth.

STANDARD PEN CO. (EVERETT JONES).

193

Complaint.

FEDERAL TRADE COMMISSION