

Complaint.

FEDERAL TRADE COMMISSION

v.

EVERETT JONES, TRADING UNDER THE NAME AND
STYLE OF STANDARD PEN CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 671—January 7, 1922.

SYLLABUS.

Where an individual engaged in the sale of cheap fountain pens, and of circulars to accompany the same, to window workers, street fakers and other dealers, whose practice it was to spend a day in a place, circularizing the same prior thereto with such matter,

- (a) Sold to said purchasers circulars containing the statement that the regular price of such pens was \$1.50 and \$2.00, but that they would be sold for one day only at prices of 49 cents, 69 cents or 79 cents, the fact being that such alleged "regular prices" were fictitious and exaggerated prices, and that the alleged reduced prices were the customary prices of said pens;

With the effect of misleading the purchasing public into believing that said pens were actually worth such "regular prices," and that it was obtaining higher grade pens at reduced prices, and of enabling, encouraging and aiding dealers thereby to defraud and mislead purchasers as to the real value of said pens;

- (b) Sold such pens accompanied by a pretended guarantee to the effect that if the same failed to give good service he would, within a year, supply a new pen upon receipt of the old, and 25 cents for "wrapping and mailing," an amount which yielded him a substantial profit on some of the pens so sold by him; and

- (c) Sold pens with the pen points marked with the words "14 K GOLD PLATED," the arrangement being such that the barrel of the pen obscured the word "plated," leaving visible the words "14 K GOLD";

With the effect of misleading the purchasing public into believing such pen points to be made of 14 karat gold, and of encouraging and aiding thereby in the misleading and deception of the public by the dealer;

Held, That such practices, 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 Everett Jones, trading under the name and style of Standard Pen Company, at Evansville, Indiana, hereinafter referred to as respondent, has been 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 Commis-

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sion, 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 respondent carries on business at Evansville, Indiana, under the name and style of Standard Pen Company and is engaged in the business of selling fountain pens and certain advertising matter in the form of circulars, which accompany said fountain pens, and causes same to be transported to the purchasers thereof from the State of Indiana, through and into various other States of the United States, and carries on such business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in Paragraph 1 hereof, sells low grade fountain pens at prices ranging from 10¢ to 27¢ each, wholesale, and also sells to the purchasers of such pens, circulars, at the rate of one dollar per thousand, which circulars contain certain printed matter which purports to describe the pens so sold; that in such printed matter are certain false and misleading statements, among which are statements to the effect that such pens will be sold for one day only at a greatly reduced price of 49¢; that the regular prices for such pens were \$1.50 and \$2.00 each; that the so-called regular prices mentioned in said circulars are greatly in excess of the prices at which respondent and his vendees contemplate that such pens will be resold and all greatly in excess of the actual prices at which such pens sell in the usual course of retail trade; that such pens are sold by respondent accompanied by the circulars as aforesaid, with full knowledge that the prices mentioned in said circulars, as the regular prices, are to be used by his vendees for the purpose of misleading and deceiving the purchasing public by inducing them to purchase said pens, when offered for sale at prices substantially below the so-called regular prices mentioned in said circulars, upon the mistaken belief that said pens are being sold at a greatly reduced price; that in selling said pens accompanied by circulars as aforesaid, respondent comes in direct competition with manufacturers of pens and other dealers in pens who do not use in connection therewith circulars or other means of announcing false, fictitious and misleading prices for pens sold by them; that respondent by the means aforesaid aids, abets and assists his customers to whom he sells pens and circulars, as aforesaid, in using unfair methods of competition against others similarly engaged, but who do not make use of circulars or other means of announcing false and misleading prices.

PAR. 3. That the circulars sold by respondent as described in paragraph 2 hereof, contain the further false and misleading statement that the pens sold by respondent are guaranteed for five years, whereas the only guaranty given by respondent is to the effect that if pens sold by him should not give service, that respondent will within one year, give to the purchaser a new pen upon receipt of the old pen and 25¢ to pay for wrapping and mailing.

PAR. 4. That as a further means of aiding and abetting his customers to mislead and deceive the purchasing public in the resale of pens so sold by respondent, respondent caused certain of said pens to be fitted with pen points stamped "14 K. Rolled Plate," with the word "plate" so near the end of the pen point that it became invisible when the pen point was inserted in the holder, whereby the purchasing public was misled and deceived and induced thereby to buy such pens upon the mistaken belief that such pens were fitted with points made of 14 K. gold.

PAR. 5. That by reason of the facts set out in the foregoing paragraphs of this amended complaint, the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by 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."

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, Everett Jones, trading under the name and style of Standard Pen Co., 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 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.

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Everett Jones, trading under the name and style of the Standard Pen Company, with principal place of business at the City of Evansville, State of Indiana, is now and at all times hereinafter mentioned has been engaged in the business of selling fountain pens and advertising matter, in the form of circulars, which accompany such fountain pens, 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 his business as aforesaid, respondent sells and transports fountain pens and advertising matter in the form of circulars, which accompany such fountain pens, to customers in different States of the United States, causing the same to pass from the State of Indiana through and into various 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 advertising circulars, which accompany said fountain pens, between and among the different States of the United States.

PAR. 3. That within one year last past, respondent, in the conduct of its business has sold, at wholesale in commerce as aforesaid, low-grade fountain pens at prices ranging from \$15. to \$38. per gross, and at the same time has sold to purchasers of said pens advertising circulars at the rate of \$1. per thousand, which circulars contain certain printed matter which purports to describe the fountain pens so sold.

PAR. 4. That said circulars sold by respondent to purchasers of fountain pens, as aforesaid, contain certain false and misleading statements, among which are statements to the effect that the regular price of said fountain pens are \$1.50 and \$2.00, but that they will be sold for one day only at the special prices of forty-nine cents, sixty-nine cents, or seventy-nine cents.

PAR. 5. That such resale prices are not bona fide but placed on such circulars 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 or printed on such circulars.

PAR. 6. That the fountain pens sold by respondent, as aforesaid, are purported to be guaranteed by him for one year. The only guarantee given on said pens was that if said pens failed to give good service, the respondent would within one year give the purchaser a new pen upon receipt of the old pen and twenty-five cents to pay for wrapping and mailing; that said payment of twenty-five cents by the

purchaser yields respondent a substantial profit on some pens sold by him under this guarantee.

PAR. 7. That respondent sells said fountain pens at the prices aforesaid and at the same time sells said circulars to window-workers, street fakers, and other dealers, who arrange with a drug store or other store for the use of its window for one day, and who then scatter said circulars bearing descriptive matter, as above mentioned in Paragraph 4, throughout the town advising prospective purchasers that said \$1.50 and \$2.00 fountain pens will be sold for one day only at prices of forty-nine cents, sixty-nine cents, or seventy-nine cents; that said window-workers, street fakers, and other dealers never remain more than one day in a town, but if they did they would still sell said fountain pens at the same prices the next day.

PAR. 8. That the sale by respondent of low-grade fountain pens, and at the same time the supplying of advertising circulars to purchasers of said pens, which circulars falsely represent the value of said pens to be \$1.50 and \$2.00, as set forth in Paragraph 5 above, enables dealers in said pens to defraud the purchasing public by misleading or deceiving purchasers of said pens as to the value of the pens by creating the false impression in the minds of said purchasers that such pens are actually worth \$1.50 and \$2.00 and that such purchasers are obtaining higher grade fountain pens at reduced prices, 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. 9. That within one year last past respondent has sold at wholesale, in commerce as aforesaid, fountain pens at prices ranging from \$15.00 to \$38.00 per gross, in which fountain pens are inserted pen points stamped or marked "14K Gold Plated," the words of this stamp being so arranged that the word "plated" occurs near the heel of the pen point and is obscured by the barrel or holder of the pen into which it is inserted, leaving the words "14K Gold" visible. That the words "14K Gold" have acquired a meaning in the public mind which indicates that pen points upon which these words appear are made of 14 karat gold; that the sale by respondent of fountain pens in which are inserted pens bearing the words "14K Gold Plated," with the word "plated" hidden by the barrel of the fountain pen, does create a false impression in the minds of the purchasing public that such pen points are made of 14 karat gold, and enables the dealer to whom respondent sells such fountain pens, equipped with pen points, stamped as aforesaid, to mislead and defraud the purchasing public; and that thus respondent encourages, aids and abets said dealers in misleading and deceiving the public as to the said pen points.

Order.

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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, Everett Jones, trading under the name and style of Standard Pen Company, his agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Selling or otherwise supplying circulars or other advertising matter with fountain pens sold by him, which said circulars or other advertising matter contain fictitious, exaggerated or misleading prices, descriptive of said pens and which prices are known to be in excess of the prices at which said pens are intended to be and usually are sold at retail.

(2) Selling or otherwise supplying circulars or other advertising matter with fountain pens sold by him, which said circulars or other advertising matter contain fictitious, exaggerated or misleading prices, descriptive of said pens and contain statements that said pens will be sold for one day only at a reduced price from said fictitious, exaggerated or misleading prices.

(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 Plate", the arrangement of these words being such that the word "plate" is obscured by the barrel or holder of the pen, while the words "14K Gold" remain visible.

It is further ordered, That the said respondent, Everett Jones, trading under the name and style of Standard Pen Company, shall within sixty (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 he has complied with the order of the Commission herein set forth.

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