

Complaint.

FEDERAL TRADE COMMISSION

v.

KARL GUGGENHEIM, INC.

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

Docket 672—January 7, 1922.

SYLLABUS.

Where a corporation engaged in the sale to peddlers, street fakers and other dealers of cheap fountain pens packed in individual containers bearing the legend "Price \$2.00" which was a fictitious and exaggerated price,

- (a) Sold said pens so packed to said peddlers, etc., who resold them to the public at prices many times in excess of their cost, and often at the price indicated, with the representation that they were reasonably worth said price, knowing that said peddlers, etc., intended so to resell; with the effect of misleading purchasers and the general public into believing said prices to be the usual retail prices, and of aiding said peddlers, etc., to mislead the public as to the real value of said pens;
- (b) Sold pens with pen points, composed of a cheap substance in imitation of gold, marked "14 K", with the effect of aiding said peddlers, etc., to deceive the public into believing they were buying a pen with pen point made of 14 karat gold:

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 Karl Guggenheim, Inc., hereinafter referred to as the respondent, 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 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of New York, in said State.

PAR. 2. That respondent is engaged in the business of buying and selling, in wholesale quantities, fountain pens and other specialties, and causes commodities sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States and carries on such business in direct,

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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 fountain pens which it packs singly in containers upon which it conspicuously prints what purport 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; that 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 7¢ to 25¢ each are pens placed in containers upon which the respondent prints "Price \$2."; that in selling the pens in containers so marked, the respondent comes in direct competition with manufacturers of pens and with other dealers in 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 pens in containers so marked, in using unfair methods of competition against others similarly engaged, but who do not sell pens in containers marked with such false, fictitious and misleading price marks.

PAR. 4. Respondent further, in the course of its said business, sells fountain pens at approximately 10¢ each, in which pens are fitted pen points which are stamped or labeled "14 Kt. Gold" but which pen points are not made of 14 Kt. gold, and contain no genuine gold, but are made of an inferior substance of small value; that by stamping or labeling such pen points "14 Kt. Gold" respondent aids, abets and assists its customers to whom it sells such pens, to mislead and deceive the public by inducing them to purchase such pens upon the mistaken belief that such pens are fitted with points made of 14 Kt. gold.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Karl Guggenheim, Inc., is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business at 17 East 17th Street, in the City of New York in said State, and is now and at all times hereinafter mentioned, has been engaged in the business of selling fountain pens, packed in boxes made to contain the same, 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 its business aforesaid, respondent sells and causes to be transported fountain pens, packed in boxes as aforesaid, 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, packed as aforesaid, between and among the different States of the United States.

PAR. 3. That within two years last past, the respondent has sold at wholesale, in commerce, as aforesaid, throughout the United States, cheap grades of fountain pens, at prices ranging from \$10 to \$36 per gross, said pens being packed in individual boxes or containers on which boxes or containers is stamped or marked "Price \$2.00."

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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 boxes or containers marked as aforesaid, to peddlers, street fakers and other dealers, who resell them to the public at prices many times in excess of the cost price, and often at the same price stamped or marked on said boxes or containers, with the representation that such pens are reasonably worth the price so marked or stamped on said boxes or containers.

PAR. 6. 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. 7. That respondent at the time of selling said cheap grades of fountain pens, packed in boxes or containers stamped or marked with a fictitious price as aforesaid, knew that said peddlers, street fakers and other dealers, intended to resell said pens, packed as aforesaid, to the public at the price stamped or marked 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.

PAR. 8. That within two years last past respondent has sold at wholesale, in commerce as aforesaid, to peddlers, street fakers and other dealers, a cheap fountain pen at \$1.25 per dozen, in which is inserted a pen point marked "14K"; 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 pen points inserted in the fountain pens sold by respondent as aforesaid are not made of gold, but are in fact made in imitation of gold of some cheap substance of very small value, and that by selling fountain pens containing pen points stamped or marked as aforesaid, respondent aids and abets said peddlers, street fakers and other dealers, to deceive the public into the belief that they are buying a fountain pen containing a pen point made of 14 karat gold.

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, Karl Guggenheim, Inc., 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.

(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.

(3) Selling or disposing of fountain pens in which are inserted pen points, upon which pen points are stamped or otherwise marked the symbol "14K", when said pen points are not made of 14 karat gold.

And it is further ordered, That said Karl Guggenheim, Inc., 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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