

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

ED. HAHN AND E. G. HAHN, A COPARTNERSHIP, DOING
BUSINESS UNDER THE NAME OF ED. HAHN.

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

Docket 673—January 7, 1922.

SYLLABUS.

Where a firm engaged in the sale of cheap fountain pens and of individual containers therefor bearing the legend "SELF-FILLING Standard Fountain Pen \$1.50," which was a fictitious and exaggerated price, sold the same to canvassers, peddlers, fair workers, 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 price so indicated, knowing that said individual canvassers, etc., intended so to do; with the result of misleading purchasers and the general public into believing such price to be the usual retail price and of enabling, encouraging and aiding said individual canvassers, etc., to mislead the public as to said pens' real value, 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 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 Ed. Hahn and E. G. Hahn, partners, trading under the name and style of Ed. Hahn, 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 trade under the name and style of Ed. Hahn and have their principal place of business at Chicago, in the State of Illinois.

PAR. 2. The respondents are engaged in the business of selling various specialties and novelties, including fountain pens, and cause pens sold by them to be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United

States, and carry on said 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 Two hereof, sell, at wholesale, fountain pens, which pens they pack 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 inclosing such pens therein when offered for sale at retail, and such containers are furnished by respondents for that purpose, and upon such containers respondents conspicuously print 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 respondents and their vendees contemplate that such 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 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, thereby inducing the public 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 respondents, at prices ranging from 8 to 15 cents each, are pens placed in containers upon which respondents print "Price \$1.50," 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, respondents come in direct competition with other manufacturers of pens or other dealers in pens who do not inclose same 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 respondents by the means aforesaid, aid, abet and assist their customers to whom they sell 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. 4. 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, Ed. Hahn and E. G. Hahn, a copartnership, doing business under the name of Ed Hahn, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents neither filed an answer nor entered their appearance herein, but 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 the respondents, Ed. Hahn and E. G. Hahn, a copartnership doing business under the name of Ed. Hahn, with their principal place of business located in the City of Chicago, State of Illinois, are now and at all times hereinafter mentioned have 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 their business 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 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 in 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 to wholesalers, in commerce as aforesaid, throughout the United States, low-priced fountain pens at prices ranging from \$12.00 to \$21.00 per gross, and at the same time have supplied or sold to purchasers of said fountain pens, individual boxes or containers made to contain said low-priced fountain pens, on which boxes or con-

tainers is stamped or branded, "SELF FILLING Standard Fountain Pen, \$1.50."

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 the respondents sell said low-priced fountain pens, and said boxes or containers made to contain said pens, to individual canvassers, peddlers, fair workers, street fakers and other dealers, and that said purchasers pack the fountain pens in said boxes or containers and resell them to the public at prices many times in excess of the cost price of said pens, and often at the same price stamped or branded on said boxes furnished to said individual canvassers, peddlers, fair workers, street fakers or other dealers by respondents, as aforesaid; 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.

PAR. 6. That the effect of printing or stamping of fictitious or exaggerated prices on boxes or containers supplied or sold by respondents, 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 or marked on the box or container.

PAR. 7. That respondents, at the time of selling said low-priced fountain pens, and at the same time selling or furnishing said boxes or containers, stamped or branded with a fictitious price as aforesaid, knew that said individual canvassers, peddlers, fair workers, street fakers, and other dealers, intended to pack said pens in said boxes so sold or furnished by respondents at the time of sale, and resell them to the public at the prices stamped or branded on said boxes or containers, or at other prices many times in excess of the cost price of said pens, as aforesaid, and respondents thereby encourage, aid and abet such individual canvassers, peddlers, fair workers, street fakers and other dealers, in misleading the public as to the real value of said fountain pens.

CONCLUSION.

The practices of the said respondents, 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.

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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 respondents have 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, Ed. Hahn and E. G. Hahn, a copartnership, doing business under the name of Ed. Hahn, their 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 their 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 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.

Complaint.

FEDERAL TRADE COMMISSION

v.

RUBY K. LEVY, TRADING UNDER THE NAME AND STYLE
OF BERNICE COAL CO., AND SIMON LEVY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 854—January 31, 1922.

SYLLABUS.

Where the operators of certain southwestern coal mines, the product of which greatly resembled Pennsylvania anthracite, long marketed the same extensively as "Bernice Anthracite," under which name it had become widely and favorably known to the trade and to the consuming public; and thereafter a middle western coal dealer, and her general manager, who neither dealt in the genuine Bernice anthracite, nor owned nor operated coal mines,

- (a) Adopted and used the trade names Bernice Coal Co. and Guaranty Coal Mining Co. in their business of selling coal purchased in wholesale quantities from mine operators and other dealers; and
- (b) Published and circulated booklets and other advertising matter wherein was written and featured "Bernice Coal Company" and "Bernice Burns Best," and wherein was set forth that they sold coal direct from their "Bernice mines";

With the effect of embarrassing and injuring competitors and owners and operators of genuine Bernice anthracite mines, of confusing the trade and purchasing public, and of misleading the latter into purchasing of them as and for genuine Bernice anthracite coal, coal mined elsewhere:

Held, That such misleading adoption and use of trade names, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Ruby K. Levy, trading under the name and style of Bernice Coal Co., and Simon Levy, 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 complaint, stating its charges in that respect on information and belief, as follows.

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PARAGRAPH 1. That the respondent, Ruby K. Levy, carries on business at Chicago, Illinois, under the name and style of Bernice Coal Co., and is and has been engaged in the business of dealing in coal, and employs as general manager of such business the respondent, Simon Levy, who is the husband of the respondent Ruby K. Levy. That respondents, in the course of said business, purchase coal in wholesale quantities from the owners or operators of mines and from dealers and scalpers in coal, and resell same, usually in carload lots; direct to the consumers. Respondents also sell coal in various communities in the several States, through local agents, which branch of their said business is carried on under the trade name of "Guaranty Coal Mining Company"; that respondents cause coal sold by them to be transported from the State or States in which it is mined or purchased, to the purchasers thereof through and into other States of the United States, and carry on said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That for a number of years before the adoption by the respondent, Ruby K. Levy, of the trade name, "Bernice Coal Company," there had been produced, and still is produced in Pope County, State of Arkansas, a grade of coal which greatly resembles Pennsylvania Anthracite coal, and which has been and is designated and known to the trade and consuming public as "Bernice Anthracite" coal, and for a period of more than twenty-five years immediately prior to the issuance of this complaint said coal has been marketed by the operators of the mines from which such coal has been produced, under the said name "Bernice Anthracite," and by extensive advertising and by other means, the operators of said mines have built up and still enjoy an extensive trade in said coal, and have caused such coal to become well and favorably known to the trade and consuming public in the State of Arkansas and States adjacent and tributary thereto, and particularly in the States of Kansas, Missouri, Nebraska, and Oklahoma.

PAR. 3. That respondents, in the course of their business as described in Paragraph 1 hereof, as a means of soliciting orders for coal, make and have made use of office stationery, booklets, circulars, circular letters and other forms of advertising matter which have been given general circulation by respondents in various States of the United States, including the States of Arkansas, Kansas, Missouri, Nebraska, and Oklahoma, which advertising matter contained numerous false and deceptive statements concerning the quality of the coal sold by respondents and their methods of carrying on business; that in such advertising matter respondents also made use of the names "Bernice Coal Company," and have featured the expression "Bernice

Burns Best." That among such false and deceptive statements were statements to the effect that respondents sold coal direct from their "Bernice mines," and that purchasers of coal from respondents got the highest possible quality of coal at a saving of about \$2 per ton; that no coal mined in the United States would give better results than respondents' best Bernice sootless, hand-picked coal, which is a grade of coal universally used and praised: Whereas, respondents did not own or operate any coal mines, but the coal sold by them is purchased in the open market or from scalpers, and is obtained from various sources and is of various grades and qualities; that the prices at which respondents sell coal do not enable the purchasers of such coal to save \$2 per ton, or to save any amount of money; that the coal sold by respondents, which they describe as "Best Bernice Sootless, Hand-picked Coal," is not universally used and praised, for there has been no uniformity in the product sold by respondents under that description, and the coal sold by respondents possessed no distinctive qualities or merit.

PAR. 4. That the use by respondents of the advertising matter described in Paragraph 3 hereof, and by carrying on business under the name and style of Bernice Coal Co., have caused confusion in the trade and in the minds of the purchasing and consuming public, particularly in the States adjacent and tributary to the State of Arkansas, and respondents have been enabled thereby to pass off coal mined in States other than the State of Arkansas as and for coal mined in Pope County, Ark., at the mines described in Paragraph 2 hereof; and the public in said States has been misled by respondents' said practices, and thereby induced to purchase coal so sold by respondents, upon the mistaken belief that it was the product of said mines in Pope County, Ark., and the operators of said mines have been injured, embarrassed and hindered by respondents' said practices in the marketing of the product of said mines in States adjoining and tributary to the State of Arkansas.

PAR. 5. That by reason of the facts recited, respondents are using an unfair method of competition in interstate 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 upon the respondents, Ruby K. Levy, trading under the name and style of "Bernice Coal Company," and Simon Levy, charging

Findings.

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them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances by their respective attorneys and having filed their answers herein, and attorneys for respondents thereafter having signed and filed a statement of facts and being desirous that such statement of facts, subject to the approval of the Commission, should be taken by the Commission in lieu of testimony herein and that the Commission might therewith proceed upon such statement of facts to make and enter its report stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same, and attorneys for respondents having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, and the Commission being fully advised in the premises, now makes its report and findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Ruby K. Levy, the [is a] sole trader doing business under the name and style of Bernice Coal Company, having her principal place of business located in the City of Chicago, in the State of Illinois; that respondent, Simon Levy, is the husband of respondent, Ruby K. Levy, and is the general manager of said business conducted by Ruby K. Levy, under the name and style of Bernice Coal Company; that respondents are now and for more than two years prior to the filing of the complaint herein, have been engaged in the business of purchasing coal in wholesale quantities from the operators of mines and from dealers in coal and selling said coal in carload lots direct to consumers thereof; that respondents also are now and for more than two years prior to the filing of complaint herein have been engaged in the business of selling coal in various communities in the several States through their local agents, which branch of respondents' said business is carried on under the trade name of "Guaranty Coal Mining Company"; that respondents caused all of said coal so sold by them to be transported from the State or States in which it is mined or purchased to purchasers thereof located throughout other different States of the United States in direct competition with other persons, firms and corporations similarly engaged.

PAR. 2. That for a number of years before the adoption by the respondent, Ruby K. Levy, of the trade name "Bernice Coal Company," there had been produced and still is produced in Pope County, State of Arkansas, a grade of coal which greatly resembles Pennsyl-

vania anthracite coal and which has become known to and designated by the trade and consuming public as "Bernice Anthracite" coal; that for a period of more than twenty-five years, prior to the issuance of the complaint herein said coal has been marketed by the operators of mines from which such coal has been produced under the said name "Bernice Anthracite"; that the operators of said mines do now and for many years have enjoyed an extensive trade in said coal; that said "Bernice Anthracite" coal has become well and favorably known to the trade and consuming public in the State of Arkansas, and various other different States of the United States.

PAR. 3. That respondents in the conduct of their business as aforesaid, for more than two years prior to the filing of the complaint herein have caused to be published and circulated through various States of the United States, booklets, circulars, letters and other advertising matter wherein was written, printed and featured "Bernice Coal Company" and "Bernice Burns Best," and wherein was printed and set forth that respondent sold coal direct from their "Bernice Mines," whereas in truth and in fact respondents do not now and have never owned or operated coal mines, and do not now and have never sold or shipped coal direct from their own mines, but sold and shipped coal purchased by them from mine operators and in the open market.

PAR. 4. That the acts, practices, and representations of respondents in the manner and form mentioned and set forth in the foregoing paragraphs have embarrassed and injured competitors of respondents and owners and operators of coal mines in Pope County, Arkansas, in the conduct of their said businesses, and have caused confusion in the coal trade and in the minds of the consuming public throughout different States of the United States, and have resulted in said consuming public purchasing from respondents coal other than "Bernice Anthracite" Pope County, Arkansas, coal as and for "Bernice Anthracite" coal mined in Pope County, Arkansas. That respondents do not now and never have sold or shipped to the trade or consuming public coal mined or coming from the "Bernice" anthracite mines in Pope County, Arkansas.

CONCLUSION.

That the practices of said respondents 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.

4 F. T. C.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respective respondents, together with statement of facts filed by respondents, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions 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,"

It is now ordered, That the respondents, Ruby K. Levy, trading under the name and style of Bernice Coal Company, and Simon Levy, and their agents, servants and employees, cease and desist, directly or indirectly:—

1. From making use of, by advertising or otherwise, the words "Bernice Coal Company," or the words "Bernice Burns Best," or the word "Bernice" in any way whatsoever in connection with the sale, offering for sale, or advertising of coal in commerce, unless said coal sold or offered for sale by respondents comes from the Bernice mines located in Pope County in the State of Arkansas.

2. From representing, by advertising or otherwise, that the coal respondents sell comes direct from their own mines, unless at the time of such representation the respondents own or operate mines from which said coal is mined.

It is further ordered, That respondents shall within sixty (60) days after service upon them of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION

v.

HENRY J. BRIEDE AND W. P. ROGOVSKY, PARTNERS.