

Complaint.

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FEDERAL TRADE COMMISSION

v.

HENRY LEDERER & BROS., INC.

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

Docket 946—April 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of fountain pens and pencils, which were sold by it at wholesale at \$1.50, each, and resold at retail at prices ranging from \$2 to \$2.50 and \$1 to \$1.25, marked the pens with a price mark of \$10, and the pencils with a price mark of \$5; the fact being that such pretended prices did not represent the contemplated retail prices of said articles, but were fictitious prices used for the purpose and with the effect of misleading and deceiving the purchasing public and inducing the purchase thereof as special bargains when offered at substantially lower figures, and enabling unscrupulous dealers to misrepresent the same, and with the tendency and capacity to enable dealers to obtain therefor prices higher than justified by their grade and quality and by free and open competition:

Held, That such mislabeling, or misrepresentation of price, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that Henry Lederer & Bros., Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Rhode Island and having its main office and principal place of business in the city of Providence in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture of novelties, knives, jewelry, pens, and pencils, and the sale thereof to jobbers and retailers throughout the United States, causing the products so manufactured and sold by it to be transported to the purchasers thereof from its said place of business in the State of Rhode Island, through and into various other States of the United States, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 herein, respondent sells, and for more than one year last past has sold, fountain pens and pencils manufactured by it, upon which it places labels, conspicuously displaying excessive proposed resale price marks, which price marks are not the real or actual prices at which such fountain pens and pencils are resold, or may be expected to be resold to the purchasing public, but, on the contrary, are, and are known to respondent to be false, exorbitant, and fictitious prices, far in excess of the true value of the fountain pens and pencils, and of the prices at which such fountain pens and pencils are actually sold to the ultimate purchaser in the usual course of trade; that among the false, fictitious, and misleading prices so marked by respondent on its products are the following: Fountain pens which it sells at wholesale for \$1 each, and which are sold at retail at prices varying from \$2 to \$2.50, respondent marks "\$10.00"; pencils which it sells at wholesale at 50 cents each and which are sold at retail at prices varying from \$1 to \$1.25, respondent marks "\$5.00"; that the fountain pens and pencils, so marked, are sold by respondent with the expectation that such marks are to be used for the purpose of misleading and deceiving the purchasing public, by inducing the public to purchase such pens and pencils, when offered for sale at prices substantially below those printed on such labels, upon the mistaken belief that such pens and pencils are being sold at a greatly reduced price.

PAR. 3. There are a considerable number of manufacturers of fountain pens and pencils who do not mark their products with false, fictitious, or misleading price marks, such as used by respondent, and who do not aid or abet dealers in misrepresenting such products to the public.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods 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 upon the respondent, Henry Lederer & Bros., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Findings.

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Respondent having entered its appearance, but made no answer, 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, having duly considered the record and being now fully advised in the premises, makes this its report stating its finding as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Rhode Island and having its main office and principal place of business in the city of Providence in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture of novelties, knives, jewelry, pens, and pencils, and the sale thereof to jobbers and retailers throughout the United States, causing the products so manufactured and sold by it to be transported to the purchasers thereof from its said place of business in the State of Rhode Island, through and into various other States of the United States, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. For more than one year prior to the issuance of the complaint herein, respondent, in the regular course and conduct of its business as above described, sold fountain pens and pencils manufactured by it, and labeled same conspicuously with excessive proposed resale price marks. Fountain pens which it sold at wholesale for \$1 each and which were resold by the retail trade at prices varying from \$2 to \$2.50 respondent labeled with the price mark of \$10. Pencils which it sold at wholesale at 50 cents each, and which were resold at retail prices varying from \$1 to \$1.25 it marked with a price mark of \$5.

PAR. 3. The price marks placed by respondent on its pens and pencils as aforesaid, were not the real or actual prices at which such fountain pens and pencils were resold, or were expected to be resold to the consuming public, and were known to the respondent to be false, fictitious, and exorbitant, and to be greatly in excess of the true value of such fountain pens and pencils, and to be in excess of the prices at which such fountain pens and pencils were actually sold to ultimate purchasers thereof in the usual course of trade.

PAR. 4. Fountain pens and pencils, marked with such fictitious prices, were sold by respondent with the expectation that such marks would be used for the purpose of misleading and deceiving the purchasing public, by inducing the public to purchase such pens and pencils, when offered for sale at prices substantially below those printed on such labels, upon the mistaken belief that such pens and pencils were being sold at a greatly reduced price; and the practice by respondent of labeling fountain pens and pencils with such fictitious marks did mislead and deceive a substantial portion of the purchasing public by inducing them to believe that the retail price of such fountain pens and pencils was the price marked thereon, and that when they were procured at less prices, the purchaser was securing a special bargain.

PAR. 5. The sale by respondent of fountain pens and pencils marked with fictitious and exaggerated prices as aforesaid, enabled unscrupulous dealers to misrepresent same in reselling to customers, and further had the general tendency and capacity of enabling dealers to obtain for such pens and pencils higher prices than those justified by the grade and quality thereof, and by free and open competition.

PAR. 6. There are a considerable number of manufacturers of fountain pens and pencils who do not mark their products with false, fictitious, and misleading price marks, such as those used by respondent, and who do not aid or abet dealers in misrepresenting such products to the public.

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 a stipulation of facts entered into on behalf of the Commission and the respondent, in which stipulation of facts respondent waived its right to presentation of oral argument, 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

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create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Henry Lederer & Bros., Inc., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly—

1. Stamping, branding, labeling, or otherwise marking fountain pens and pencils sold or intended to be sold by it with fictitious, exaggerated, or misleading prices, known to be in excess of the prices at which such pens and pencils are intended to be and usually are sold at retail;

2. Selling or supplying its customers with fountain pens and pencils on which are stamped, branded, labeled, or otherwise marked, fictitious, exaggerated, or misleading prices, known to be in excess of the prices at which such pens and pencils are intended to be and usually are sold at retail.

Respondent is further ordered, To file a report in writing with the Commission thirty (30) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

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