

Complaint.

IN THE MATTER OF

M. F. SKIDMORE AND ELMER L. SKIDMORE, DOING BUSINESS INDIVIDUALLY UNDER THE NAMES AND STYLES OF "WM. BOLLES DOLLAR PEN COMPANY," "SKIDMORE PEN COMPANY," AND "TOLEDO GOLD FILLER FOUNTAIN PEN COMPANY."

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 961—August 20, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a fountain pen, the barrel of which was characterized by a design of waved annular lines and a distinctive gold crescent with locking band, protruding therefrom and used as a filling agency, designated said crescent filler as "The Crescent Filler," "Crescent Filler," "Crescent Gold Filler," and "Gold Filler," in its pamphlets, and other publicity matter; featured in the designs or pictures illustrating its pens the aforesaid distinctive features; and at large expense extensively advertised said pens, so that it built up a large and valuable good will therefor; and thereafter two competitors designated, branded and advertised pens embodying the aforesaid annular design, gold crescent, and locking band, and closely resembling in appearance said competitor's pens, "Gold Filler," "Gold Filler, Toledo, Ohio," and "Gold Filler Pen, Toledo, Ohio, U. S. A." without any trade names or other markings showing clearly the source of manufacture of said pens, with the effect of misleading and deceiving a substantial portion of the purchasing public into believing their pens to be those of said competitor and of inducing their purchase in that belief:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Malcolm A. Coles for the Commission.

Mr. Mark Winchester of Fritsche, Kruse & Winchester of Toledo, Ohio, for respondents.

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 M. F. Skidmore and Elmer L. Skidmore, partners, doing business under the names and styles of the "Skidmore Pen Company," "William Bolles Dollar Pen Company," and "Toledo Gold Filler Fountain Pen Company," have been and are now using unfair methods of competition in commerce in violation of the pro-

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visions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, M. F. Skidmore and Elmer L. Skidmore, are copartners doing business under the names and styles of the "Skidmore Pen Company," "William Bolles Dollar Pen Company" and "Toledo Gold Filler Fountain Pen Company." Respondents, in the course and conduct of their business, are now and for the two years last past have been engaged in the manufacture and sale in interstate commerce of fountain pens with their principal office and place of business in the city of Toledo, in the State of Ohio. Respondents manufacture their said product by assembling the different component parts thereof and distributing the finished product in interstate commerce by shipping it to the various purchasers thereof located in various States of the United States and the District of Columbia. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture and sale in interstate commerce of fountain pens.

PAR. 2. Amongst the aforesaid competitors of respondents is the Conklin Pen Company, hereinafter called the Company, a corporation created and existing under the laws of the State of Ohio with its principal office and place of business in Toledo, in said State, where it is engaged in the manufacture and sale in interstate commerce of fountain pens.

The said Company has, for many years past, manufactured and sold, and now manufactures and sells, a fountain pen which it advertises extensively in newspapers, periodicals and magazines and by means of circulars and various other advertising matter which it distributes or causes to be distributed throughout the various States of the United States and the District of Columbia. The distinctive feature of said pen so manufactured by the said Company is a gold crescent which protrudes from the barrel of the pen and a locking band, the agency by which the said pen is filled with ink. This device up to about two years ago was patented and distinguished said pen manufactured by the said Company from all other fountain pens on the market. The said Company brands this said distinctive device as "Crescent-Filler" and in the various advertisements, pamphlets, circulars and other advertising matter of the said Company designates its said pen as "Crescent-Filler," "Crescent Gold Filler" and "Gold Filler," and because of said advertisements and because of the excellence of the product manufactured by the said Company a large and valuable good will has been built up amongst the purchasing public of the United States for the said product of the said Company, and the names "Crescent-Filler," "Crescent Gold Filler"

and "Gold Filler," when used in connection with a fountain pen of the characteristic type described next above, have been and are now associated by the general purchasing public with the products of said Company.

PAR. 3. Respondents, shortly after the expiration of the patent on the pen manufactured and sold by the said Company as set out in paragraph 2 hereof, commenced the manufacture and sale of a certain pen as aforesaid very closely resembling in details of appearance the pen manufactured and sold by the said Company. The said pen so manufactured and sold by respondents embodied the feature of the locking band and the gold crescent protruding through the barrel of said pen. This device respondents brand "Gold Crescent" and advertised by means of circulars and various other printed matter the said pen under the name of "Gold Filler Pen." The use of the terms "Gold Crescent" and "Gold Filler" by respondents in connection with the similarity in size, form and general appearance of the pen so manufactured and sold by respondents under such description to the pen manufactured and sold by the said Company, as hereinbefore set out, has a tendency and capacity to deceive and mislead the general purchasing public into the belief that the pen manufactured and sold by respondents is the pen manufactured and sold by the said Company and induces the said general public to purchase the pen manufactured and sold by respondents as and for the pen manufactured and sold by the said Company.

PAR. 4. The practices, acts and conduct of respondents set forth above are to the prejudice of the public and respondents' competitors and constitute 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 its complaint upon the respondents, M. F. Skidmore and Elmer L. Skidmore, doing business individually under the names and styles, "Wm. Bolles Dollar Pen Company," "Skidmore Pen Company," and "Toledo Gold Filler Fountain Pen Company," charging them with unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearances by their attorney, and having filed their answer herein, thereupon proceedings were had before an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were

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thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer. Whereupon, this proceeding came on for final hearing, and the Commission, being duly advised in the premises, and upon consideration thereof, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Major F. Skidmore and Elmer L. Skidmore, brothers, were and are, respectively and successively engaged at Toledo, Ohio, in the business of assembling the parts and selling fountain pens in interstate commerce. Respondents were not and are not now partners in said business, but have been successive owners thereof. They have assisted, and still assist, each other in the conduct of said business, which was begun by Major F. Skidmore, who had been a jeweler, as a small side-line occupation or hobby, while employed as a clerk or bookkeeper in the post-office at Toledo, Ohio, for about twenty-five years, where he is now engaged. Elmer L. Skidmore has been, for most of the time in question, and is now, employed as a clerk in a law office in Toledo, Ohio. As a diversion, and outside of their regular working hours, these brothers were engaged for an hour or so a day in the business aforesaid, which was conducted in the apartment where they resided with their families, the space occupied for assembling the pens being a small room or alcove about the size of a large table.

Prior to July 1, 1921, Major F. Skidmore was the sole owner of said business, but on that date he sold it to Elmer L. Skidmore. The sale and transfer of said business was for a cash consideration of \$250, and was the result of a decision by the postmaster of Toledo, Ohio, to the effect that Major F. Skidmore's position in the post office at that place was of a supervisory nature and came within the provisions of a postal regulation which inhibits postal employees holding supervisory positions from engaging in any private business.

Prior to July 1, 1921, the business aforesaid was conducted at different times under three names, viz: "Wm. Bolles Dollar Pen Company," "Skidmore Pen Company," and "Toledo Gold Filler Fountain Pen Company," respectively, most of the advertising of the business having been done under the name of the "Skidmore Pen Company." The pen assembled and sold in interstate commerce by Major F. Skidmore, which was chiefly the cause of this proceeding, was and is called the "Toledo Gold Filler Fountain Pen"; but after the business was acquired by Elmer L. Skidmore, the use of that name for the pen was discontinued and the words, "Gold Crescent Filler," or "Gold Filler," were employed to designate said pens.

Respondents produced their pens by assembling the different component parts thereof, and distributed the finished product in interstate commerce by shipping same to purchasers thereof residing at points in States of the United States other than the State of Ohio. In the course and conduct of said business, respondents were and are engaged in competition with other individuals, partnerships and corporations also engaged in the manufacture and sale of fountain pens in interstate commerce.

PAR. 2. In the course and conduct of the business aforesaid, respondents produced and sold, among others, some fountain pens which they designated and advertised as "Gold Filler," and upon which said pens were stamped the words, "Gold Filler, Toledo, Ohio," and "Gold Filler Pen, Toledo, Ohio, U. S. A.," but upon which pens appeared none of the respondent's various trade names, nor any other markings, labelings or stampings showing clearly the source of manufacture of said pens. Some of the pens sold by respondents contained on the barrel thereof a die stamping of the words, "Gold Filler Pen Company." Some other of said pens were marked "Gold Filler," with "Skidmore" on the clip.

PAR. 3. Among the aforesaid competitors of respondents is the Conklin Pen Manufacturing Company, a corporation created and existing under the laws of the State of Ohio, with its principal office and place of business in the city of Toledo, in said State. The said Conklin Pen Manufacturing Company has for many years last past manufactured and sold in interstate and foreign commerce a fountain pen which it advertised extensively in newspapers, magazines and other periodicals, and by means of circulars and various other advertising matter which it caused to be distributed throughout the various States of the United States and in foreign countries. The barrel of the said pen has always been chased in a design of waved annular lines, and has always had, as a distinctive feature, a gold crescent which protrudes from the barrel of the pen and locking band, the agencies whereby the said pen is filled with ink. This device, up to and until about December, 1919, was patented, and it has distinguished the said pen manufactured by the Conklin Pen Manufacturing Company from other fountain pens on the market. The Conklin Pen Manufacturing Company has a subsisting patent on its clip, and the clip used in the Skidmore Gold Filler Pen is not of the same mechanical construction as that of the Conklin, and would not, on close inspection, deceive one familiar with the Conklin clip. Said crescent filler device has been designated by the said Conklin Pen Manufacturing Company as "The Crescent Filler," and in the various advertisements, pamphlets, circulars and other

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publicity matter, the said Conklin Pen Manufacturing Company has designated its said pen as "Crescent Filler," "Crescent Gold Filler," and "Gold Filler," and has prominently emphasized in the various designs or pictures illustrating the said pens, the distinctive features heretofore set out. Said Conklin Pen Manufacturing Company has for this reason, by its extensive advertising, built up a large and valuable good will for its said pens and has expended in such advertising the following sums of money:

In 1918, \$80,000; 1919, \$100,000; 1920, \$160,000; 1921, \$130,000; 1922, \$187,000; and because of such advertising and such good will, the said Conklin Pen Manufacturing Company has sold its product as follows:

In 1919, 1,000,000 pens; 1920, 1,000,000 pens; 1921, 600,000 pens; 1922, between 800,000 and 900,000 pens.

PAR. 4. Shortly after the expiration of the said patent upon the crescent and locking band used upon the said pen manufactured and sold by the Conklin Pen Manufacturing Company, respondents, as hereinbefore set out, commenced the manufacture and sale of fountain pens closely resembling the said pens manufactured and sold by the Conklin Pen Manufacturing Company. The said pens so manufactured and sold by respondents embodied the annular waved line chasing, the locking band and the gold crescent protruding from the barrels of said pens. Said pens so manufactured and sold by respondents were a little cheaper and less accurately manufactured, and slightly inferior to the said pens manufactured and sold by the Conklin Pen Manufacturing Company. Said chasing on the barrels of said pens manufactured and sold by respondents was done for respondents by a former employee of the Conklin Pen Manufacturing Company, and respondents attempted, unsuccessfully, to obtain the crescent used in the crescent filling device upon their said pen from the same source from which the said Conklin Pen Manufacturing Company obtained its supplies of this said device. Respondents, as hereinbefore set out, branded, advertised and marked some of their said pens as "Gold Filler, Toledo, Ohio," "Gold Filler Pen, Toledo, Ohio, U. S. A.," without designating in any way the source or origin of their manufacture, and the said pens manufactured and sold by respondents as aforesaid, in close similitude to the pens manufactured and sold by the Conklin Pen Manufacturing Company, not disclosing the source or origin of manufacture, were put into the channels of commerce by respondents with the intention and effect of preying upon the good will of the said Conklin Pen Manufacturing Company. The use of the terms "Gold Filler" and "Toledo Gold Filler Fountain Pen" by re-

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spondents, when applied to the said pen manufactured and sold by them, in connection with the similarity in size, form and general appearance of the said pen to the pen manufactured and sold by the said Conklin Pen Manufacturing Company, had the tendency and capacity to mislead and deceive the purchasing public into the belief that the said pen manufactured and sold by respondents was the pen manufactured and sold by the said Conklin Manufacturing Company, and did so mislead and deceive a substantial portion of the purchasing public and induced them to purchase the pen manufactured and sold by respondents as and for the pen manufactured and sold by the said Conklin Pen Manufacturing Company.

CONCLUSION.

The acts and practices of said respondents, as set forth in the foregoing findings as to the facts, are unfair methods of competition in 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 of the Commission, the answers of respondents and testimony heretofore taken, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions 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,

It is now ordered, That respondents, M. F. Skidmore and Elmer L. Skidmore, doing business individually under the names and styles, "Wm. Bolles Dollar Pen Company," "Skidmore Pen Company," and "Toledo Gold Filler Fountain Pen Company," their agents, representatives and employes, do cease and desist from advertising, selling or offering for sale fountain pens simulating in details of shape, style, plan of ornamentation and/or general appearance the fountain pens manufactured and sold by the Conklin Pen Manufacturing Company.

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

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IN THE MATTER OF
FEDERAL BOND & MORTGAGE COMPANY.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1050—September 2, 1924.

SYLLABUS.

Where a corporation engaged in the sale of mortgage bonds, which were neither obligations of the United States Government nor issued under its guarantee, sponsorship or supervision, and neither connected with the Government nor under its supervision,

- (a) Prominently displayed its corporate name, "Federal Bond and Mortgage Company" in advertising and describing its business and the bonds offered by it, in newspapers, magazines, letters, pamphlets, etc.;
- (b) Used the slogan "Federal bonds are better bonds" in many instances in connection with statements concerning such bonds and business;
- (c) Referred to its bonds as "federal bonds" and made comments and assertions regarding the safety, popularity and desirability of "federal bonds" as investment securities and otherwise, all without disclosing the full and true facts regarding them; and
- (d) Prominently displayed on such bonds the words "United States of America" and "Federal";

With the capacity and tendency to mislead and deceive customers, prospective customers, and the public generally into believing that the Government either had some connection with, or supervised the business of, such corporation, was obligated for such mortgage bonds, supervised the making and issuance thereof and stood sponsor therefor, or guaranteed the payment of the principal and interest thereof; and with the effect of causing them to purchase said bonds, in such erroneous belief, in preference to similar securities of competitors;

Held, That such false and misleading advertising, and misrepresentation, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward E. Reardon for the Commission.

Mr. Samuel R. Williams of Stevenson, Carpenter, Butzel & Backus of Detroit, Mich., for respondent.

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 the Federal Bond & Mortgage Company, hereinafter referred to as respondent, has been and is using unfair methods of competition