

Complaint.

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IN THE MATTER OF

W. C. BLICKENSTAFF, OTHERWISE KNOWN AS W. C. BLICK, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF STANDARD 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 1264—June 24, 1925.

SYLLABUS.

Where an individual engaged in the purchase of pens from the manufacturers, and in the sale thereof to wholesale peddlers, itinerant vendors and retail dealers,

- (a) Supplied his dealer customers with coupons purporting to be "worth \$1.01 if used to-day," and to entitle the bearer upon the payment of 49 cents "to one regular \$1.50 standard self-filling fountain pen * * *," (and with similar coupons, but with higher figures for his more expensive pens), the fact being that the pretended prices were greatly in excess of the true values of such pens and of the prices at which it was contemplated by said individual and his customers that they should be, and at which they actually were, sold; with the result that purchasers among whom said coupons had been distributed by such dealer customers pursuant to his instructions and sales plan, were led to believe that they were getting at a considerably reduced price a pen worth the amount therein stated, and were thereby induced to buy the same from such dealer customers; and trade was thus diverted from competitors who did not so misrepresent the prices or values of their pens;
- (b) Sold pens with pen points which he caused to be stamped "14K," the fact being that said points were not made of, and did not possess the durability or other desirable characteristics of, 14 carat gold, but were composed of an alloy simulating gold in appearance but containing no substantial amount thereof; with the result that many purchasers were induced to buy such pens from said dealer customers, and trade was diverted from competitors who did not thus misrepresent the quality of their pens or pen points:

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

Mr. Edward J. Hornibrook for the Commission.

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 W. C. Blickenstaff, otherwise known as W. C. Blick, doing business

under the trade name and style Standard Fountain Pen Company, 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, W. C. Blickenstaff, otherwise known as W. C. Blick, is an individual doing business under the trade name and style Standard Fountain Pen Company, with his place of business in the city of Los Angeles, State of California. He is engaged in the sale of fountain pens at wholesale to peddlers, itinerant vendors, and retail dealers located, or at the time doing business at, points in various States of the United States. He causes said fountain pens when so sold to be transported from his said place of business in the city of Los Angeles, Calif., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of fountain pens in commerce between and among various States of the United States.

PAR. 2. In the course of his said business respondent supplies to aforesaid vendees circulars and other advertising matter which describe said pens and bear purported regular retail prices thereof, which said prices are fictitious and exaggerated, and greatly in excess of the real value of said pens, and greatly in excess of the prices at which respondent and his said vendees expect to and regularly do sell said pens, and respondent further supplies to said vendees certain coupons to be, and which are by said vendees, given to and distributed among the public, which coupons have printed thereon said purported regular retail prices, together with a substantial face value of said coupons, and statements to the effect that for one day only said coupons, if presented at the place of business designated thereon, will be to the amount of said face value, accepted as part payment in the purchase of said pens at said regular retail prices, thus falsely representing that said pens will be sold for a limited time at a substantial reduction in price. Respondent thus places in the hands of his said vendees the means of committing a fraud upon the public.

PAR. 3. There are among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture and/or sell fountain pens in interstate commerce who do not by the use of coupons

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or otherwise announce fictitious and exaggerated retail prices for their said pens, and respondent's acts and practices unfairly divert business from and otherwise prejudice and injure said competitors.

PAR. 4. Further in the course of his aforesaid business, respondent causes certain of said pens to be fitted with pen points marked or stamped "14 K." "14 K" is an abbreviation for the term "14 karat" and is a mark or descriptive term used in the jewelry trade to designate a substantial percentage of gold combined with a baser metal or metals into an alloy known to the trade and public as 14 karat gold, and used in the manufacture of jewelry, including pen points, and when said mark or term "14 K" is used in the jewelry trade it signifies to, and is understood by the purchasing public to mean that the articles asserted to be of 14 karat gold or articles marked with said symbol "14 K" are manufactured from said alloy, and that said articles possess and retain a luster and brilliance of a golden character derived from the presence of said substantial quantity of gold in said alloy, and articles of jewelry and pen points made of said alloy are preferred by the public to similar articles made of alloys containing no gold or an unsubstantial amount of gold. Aforesaid marking or stamping by respondent of said pen points had and has the capacity and tendency to mislead and deceive many of the purchasing public into the erroneous belief that said pen points so marked or stamped are composed of 14 karat gold, as above described, and to purchase the same in that belief. In truth and fact respondent's said pen points are made of an alloy simulating gold in color and appearance but containing no gold or an unsubstantial quantity thereof, and not having the durability, luster, value and other desirable characteristics possessed by said 14 karat gold.

PAR. 5. There are also among the aforesaid competitors of respondent those who manufacture and/or sell in interstate commerce pen points and pens fitted with pen points actually made of 14 karat gold and truthfully marked or stamped "14 K." There are others of said competitors who manufacture and/or sell in interstate commerce pen points and pens fitted with pen points composed of alloys containing either no gold or an unsubstantial quantity thereof and who in nowise misrepresent said pen points, respectively as containing gold or containing gold in substantial quantities, and said marking or stamping by respondent of his pen points as aforesaid, unfairly diverts business from and otherwise prejudices and injures said competitors.

PAR. 6. 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 W. C. Blickenstaff, otherwise known as W. C. Blick, charging him with the use of unfair methods of competition in commerce in violation of Section 5 of the provisions of said Act.

The respondent filed an answer and entered his appearance herein, and 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 proceeding, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto; and that said Commission may proceed further upon the statement, to make its report in such proceedings, stating its findings as to the facts and conclusion, and enter its order disposing of the proceedings, and that the filing of briefs and the making of oral argument is waived; 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. The true name of the respondent is W. C. Blickenstaff, but he is otherwise known as W. C. Blick. At all times hereinafter mentioned he is, and was doing business under the trade name and style of Standard Fountain Pen Company. His place of business is the City of Los Angeles, in the State of California. He is engaged in the sale of fountain pens at wholesale to peddlers, itinerant venders, and retail dealers located in cities and towns in various States of the United States. The said fountain pens, when so sold, are transported by respondent from his said place of business in the City of Los Angeles, State of California, into and through other States of the United States to the said purchasers at their respective points of location. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of fountain pens in interstate commerce.

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PAR. 2. Respondent has been engaged, as aforesaid, for several years last past, and in the course and conduct of his said business he uses, and has used the following methods: He purchases his said pens from Marx Finestone, and David Kahn, of New York City, who are manufacturers of cheap pens. Respondent handles several grades of pens; one for which he pays \$18 per gross, or about 12 cents each, and sells for \$23 per gross, or about 16 cents each; one for which he pays \$25 per gross, or about 17 cents each, and sells for \$32 per gross, or about 22 cents each; one for which he pays \$28 per gross, or about 19 cents each, and sells for \$36, or about 25 cents each, and one for which he pays \$60 per gross or about 41 cents each, and sells for \$65 per gross, or about 45 cents each. Respondent advertises in at least two magazines, namely, "The Specialty Salesman," and "Billboard," and as the result of such advertising he has secured a number of customers throughout the country who dispose of said pens in accordance with a sale plan submitted to them by respondent when the first shipment of pens is made. These pens are sold by respondent's customers in the various States of the United States under a so-called written guarantee and redemption of coupon system; the guarantee and coupons are prepared by the respondent and are sold to his said customers at the rate of \$1 per 1,000 for those that are plain and \$1.50 per 1,000 for those that are fancy. The following wording is on the coupons used in connection with the sale of the cheapest pen:

Special to-day only, this coupon worth \$1.01 if used to-day. This coupon and 49¢ entitles the bearer to one regular \$1.50 Standard self-filling fountain pen on sale to-day at ———. Every pen filled and tested. Guarantee with every pen. Limited to two pens to a customer.

The coupons used to promote the sale of respondent's other pens are worded the same as the one above set out, except that the purported value of the coupon is greater. The respondent issues and sends to its said customers a pamphlet which is named and called, "The Entire Demonstration Selling Plan," in which he advises his customers to rent 3 or 4 feet of counter space from the proprietor of a drug store or a tobacconist on a prominent corner, and agree to pay the proprietor thereof 10 per cent commission on all sales, and to distribute the said coupons in thickly settled communities to all persons living within a radius of five or six blocks of the store at which the pens are to be sold, and also to have somebody standing at the entrance of the store for the purpose of handing a coupon to every person who passes by. The guarantee hereinbefore mentioned is for good service of the pen for the period of one year, and an

agreement to repair the pen if, during that time, it becomes unworkable by reason of anything except hard usage.

PAR. 3. The instructions issued by respondent to his customers, as described in the preceding paragraph hereof, are intended by respondent to be, and are in fact, carried out by respondent's customers in the sale of said pens in the different cities and States of the United States. The coupons such as are described in the preceding paragraph hereof are in fact scattered in the localities where respondent's customers have taken space in stores, as aforesaid, and are handed out at the doors of said stores as aforesaid, and the ultimate purchasers of the aforesaid pens are thereby led to believe by said coupons that they are getting at a considerably reduced price a pen which is worth the amount stated on said coupons, when in truth and in fact said prices are fictitious and exaggerated, and greatly in excess of the true value of the said pens, and greatly in excess of the prices at which respondent and his customers expect to and do sell said pens, and many of the said ultimate purchasers are induced to buy said pens from customers of said respondent because of said fictitious and exaggerated price being marked upon such coupons as aforesaid.

PAR. 4. In the course of his aforesaid business, respondent causes certain of the said pens to be fitted with pen points marked or stamped "14 K." "14 K" is an abbreviation of the term "14 carat," and is a mark or descriptive term used in the jewelry and pen trade to indicate and designate a substantial percentage of gold combined with a basic metal or metals into an alloy known to the trade and the public as 14 carat gold. and used in the manufacture of jewelry, including pen points, and when said mark or term is so used in the jewelry or pen trade it signifies to, and is understood by, the purchasing public to mean that the articles possess and retain a luster and brilliance of a golden character derived from the presence of a certain percentage of gold in said alloy; and articles of jewelry and pen points made of such alloy are preferred by the public to similar articles made of alloy containing no gold or an unsubstantial amount of gold. These said pen points, sold by respondent as aforesaid are not made of 14 carat gold. These said pen points are made of an alloy simulating gold in color and appearance and contain no substantial amount of gold, and do not have the durability, luster, value, and other desirable characteristics possessed by 14 carat gold.

PAR. 5. Many of the ultimate purchasers of the pens described in the preceding paragraph hereof are induced to purchase the said pens from the customers of respondent because of the stamp of "14 K" being placed upon the pen point thereof, as aforesaid, and

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they purchase the same in the belief that said point is in fact 14 carat gold.

PAR. 6. There are among the aforesaid competitors of respondent many who sell fountain pens in interstate commerce who do not by the use of coupons or otherwise announce fictitious or exaggerated retail prices for their said pens.

PAR. 7. There are among the aforesaid competitors of respondent many who sell in interstate commerce pen points actually made of 14 carat gold and truthfully mark or stamp "14 K" thereon. There are others among the said competitors of respondent who sell in interstate commerce pen points and fountain pens fitted with pen points composed of alloys containing an unsubstantial amount of gold who in no wise misrepresent said pen points as containing a substantial amount of gold.

PAR. 8. The use of said coupons as hereinbefore described, announcing said fictitious and exaggerated retail prices for said pens has the tendency and capacity to deceive and does deceive the ultimate purchasers thereof, and diverts trade from those competitors of respondent who do not so misrepresent the price or value of their said pens.

PAR. 9. The said marking or stamping of respondent's pen points with the figures and letter "14 K" as aforesaid has the tendency and capacity to deceive and does deceive the ultimate purchasers thereof and diverts trade from those competitors of respondent who do not so misrepresent the quality of their said pens or pen points.

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 answer thereto, and an agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusions that respondent has violated 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,"

It is now ordered, That the respondent W. C. Blickenstaff, otherwise known as W. C. Blick, doing business under the trade name and style of Standard Fountain Pen Company, his agents, representatives, servants and employees, do cease and desist from directly or indirectly—

1. Stamping, printing or marking, or causing the same to be done on any coupon, advertisement, or anything else, for use in connection with the sale of or advertising of fountain pens, any 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. Issuing, selling, or furnishing to his pen customers, or circulating the same in any manner, any coupons, advertising matter or other written, stamped or printed matter which bears a fictitious exaggerated or misleading price for such fountain pens in excess of the price at which such fountain pens are intended to be, and usually are, sold at retail.

3. Selling or offering for sale fountain pens or pen points upon either of which appear the figures and letters "14 K" or the words "fourteen carat," or any abbreviation of the words "fourteen carat," unless such points of such pens, or such pen points are made of 14-carat gold.

And it is further ordered, That said respondent shall within thirty 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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IN THE MATTER OF

H. O. GREENBAUM, TRADING AS TECHNICAL COLOR & CHEMICAL WORKS, AND VICTORY SHELLAC WORKS.

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

Docket 1056—June 30, 1925.

SYLLABUS.

Where an individual engaged in the manufacture and sale of paints, varnishes, shellac, and shellac substitutes, including a product composed of a small percentage of pure shellac gum, and in some instances no shellac gum whatever; sold said product labeled, branded, and advertised as "Red Devil Shellac" and "Victory White Shellac," and represented on the labels on the containers thereof as guaranteed to be pure shellac gum dissolved in denatured alcohol, in competition with concerns which sold their products, labeled and branded in accordance with the spirit and purpose of a resolution adopted by the National Varnish Manufacturers Association and other organizations, and designed to prevent the debasement of the term "shellac" and to protect the purchasing public, through providing for the use on labels and in advertising of products not composed exclusively of shellac gum dissolved in alcohol, of the word "compound", together with the word "shellac", where the latter content equalled or exceeded ~~one-half~~ half of the total solid content, and for the use of the word "substitute", or "imitation", together with the word "shellac", in other cases; with the ~~effect~~ ^{effect} of misleading and deceiving a substantial part of the purchasing public into believing such compounds to be composed solely of genuine shellac gum dissolved in alcohol and with the capacity and tendency to induce the purchase thereof in such belief:

Held, That the sale of said product, labeled and advertised as above set forth, constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Mr. J. T. Watkins of Washington, D. C., 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 H. O. Greenbaum, trading as Technical Color & Chemical Works, and Victory Shellac Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in 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 an individual trading under the names of Technical Color & Chemical Works and Victory Shellac