

Complaint

IN THE MATTER OF

FLORA LEVY AND SARAH LEE, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STLYE ACME FOUNTAIN PEN COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1429. Complaint, Oct. 30, 1926—Decision, Apr. 26, 1927

Where a firm engaged in the purchase of fountain pens, pencils and sets, and in the sale thereof to agents or representatives who purchased such pens, pencils and sets at \$1.55, \$1.50, and \$3.50 each, respectively, and resold the same to the consuming public at \$2.50 each for the pens and pencils and \$5.50 for the sets,

- (a) Falsely represented in the letters through which they solicited persons to become their representatives and in their circulars inclosed by them therein, describing and depicting their aforesaid products, that they manufactured the same, that their prices to their representatives did not include middlemen's profits, and that they were therefore able to and did sell their said products to representatives at prices much lower than prevailing retail prices; with the tendency and capacity to mislead and deceive said representatives and, through them, a substantial part of the consuming public, and induce the purchase of such articles in the belief that they, the partners, were the manufacturers thereof, selling the same at prices which did not include any middleman's profit, and with the effect of diverting trade from competitors who manufactured and sold like products and truthfully represented themselves as so doing; and
- (b) Affixed to their aforesaid pens, pencils and sets, bands and labels respectively bearing the price marks \$7, \$4, and \$11.50, and in their circulars and letters falsely represented the aforesaid false and greatly exaggerated prices as the ordinary retail prices of their said products; with the tendency and capacity to mislead and deceive said representatives, and, through them, a substantial part of the consuming public by causing them to believe the aforesaid prices to be those at which such products were respectively sold to the public, and to cause them to purchase the same in such belief, and with the effect of diverting trade from competitors who placed upon the articles dealt in by them bands and labels showing the true prices at which the various articles were usually and customarily sold to the consuming public:

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

Mr. Robert O. Brownell for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

Complaint

11 F. T. C.

respondent individuals, partners engaged in the sale of fountain pens and lead pencils to persons in various States, and with place of business in Chicago, with advertising falsely or misleadingly in misrepresenting prices and in misrepresenting business status, and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, for about two years preceding the complaint, in their leaflets, pamphlets and other trade literature sent to persons whom they solicited to become their representatives in said persons' communities, represented that their pens and pencils were of a specified regular retail value and price and so banded and labeled, and that they were the manufacturers thereof, and therefore able to sell the same at prices greatly below said purported regular retail prices, and offered said products to such prospective representatives at prices greatly below said prices, with the suggestion and instruction that in the event of becoming respondents' representatives, they resell the same to the consuming public at prices about one dollar higher than those at which bought by said representatives, but greatly below the purported regular retail prices, the fact being that said prices upon the bands and labels of respondents' pens and pencils were fictitious and exaggerated and greatly in excess of those at which said products were regularly sold by respondents as also of those at which respondents' representatives were advised and instructed to and did regularly sell the same to the consuming public and that respondents did not manufacture said products but purchased the same from others and resold them to such representatives at a profit to respondents, with the result that respondents procured many persons to become their representatives for the sale of said pens and pencils, to purchase and offer the same to the consuming public at a profit to such representatives, to repeat to their customers and prospective customers respondents' false and misleading statements and representations, to display respondents' aforesaid leaflets, etc., with said false and misleading statements and representations, and to display said pens and pencils bearing said fictitious regular retail prices.

Such acts and practices by respondents were done with the intent and had the effect of misleading and deceiving such sales representatives and through them the consuming public into believing that said pens and pencils were of the fair retail value of and regularly sold at such fictitious and exaggerated prices, were calculated and intended to cause such representatives to offer and sell the same and many of the consuming public to purchase the same, at prices

much lower than said fictitious retail prices, in the belief that they were thus sold and purchased at greatly reduced prices, and had the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom do not, by the use of fictitious price marks or otherwise, represent pens and pencils dealt in by them, or enable others to represent such pens and pencils, as of a regular and usual retail value in excess of the actual and customary retail price, and with the tendency to cause such effect; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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 respondents Flora Levy and Sarah Lee, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondents having entered their appearance, hearings were had and evidence received before W. W. Sheppard, an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Flora Levy and Sarah Lee are partners doing business under the trade name and style of Acme Fountain Pen Co., with their principal office and place of business in the city of Chicago, State of Illinois. They are now and for more than a year last past have been engaged in the business of purchasing from the manufacturers thereof fountain pens, lead pencils, and sets each consisting of a pen and a pencil packed together in a case, and selling same to persons located in various States of the United States. They cause said pens, pencils, and sets when so sold to be transported from their said place of business in Chicago, Ill., into and through other States of the United States to the purchasers thereof at their various places of location. In the regular course of their business respondents have been and now are in competition with corporations, partnerships, and individuals who are also engaged in the sale and distribution of fountain pens, pencils, and sets in commerce between and among the various States of the United States.

Findings

11 F. T. C.

PAR. 2. For more than a year last past respondents have conducted their business described in paragraph 1 of these findings in the following manner: They sent to individuals engaged in various occupations, such as insurance agents, tailors, and managers of hotels, letters soliciting each to become their representative in his locality and as such representative to purchase fountain pens, lead pencils, and sets from respondents and resell same to the consuming public by personal solicitation. In the said letters respondents represented that they manufactured the pens, pencils, and sets which they offered for sale, that the prices at which they offered to sell the said articles to their representatives did not include middlemen's profits and that for this reason they were able to and did sell to their representatives at prices much less than the ordinary and customary retail prices of the quality of pens, pencils, and sets so manufactured and sold by respondents. With the said letters respondents sent to each of said individuals circulars describing and depicting their said pens, pencils, and sets and repeating the said representations. Many of the individuals receiving said letters and circulars accepted respondents' offer and became representatives of respondents in their respective localities, purchased the said fountain pens, pencils, and sets from respondents, resold same to the consuming public and used and displayed the said circulars received from respondents as aids in making such sales to the public.

PAR. 3. The representations made by respondents that they were the manufacturers of the fountain pens, pencils, and sets thereof which they sold and offered for sale all as set out in paragraphs 1 and 2 of these findings were false and misleading and had and have the tendency and capacity to mislead and deceive their representatives and through them a substantial part of the consuming public by causing them to believe that respondents were the manufacturers of the said articles and were selling direct from their factory to their representatives at prices which did not include any middleman's profit, and to cause them to purchase the said articles in that belief.

PAR. 4. It is an advantage to a seller of fountain pens, pencils, and sets of pens and pencils, to be known and recognized by the trade and by the consuming public as the manufacturer of the said articles, both because it is understood by the trade and the public that a manufacturer can and does sell at prices which do not include middlemen's profits, and because a manufacturer is understood by both trade and public to be responsible for the quality of his products.

PAR. 5. There are among the competitors of respondents mentioned in paragraph 1 of these findings many who manufacture the fountain pens, pencils, and sets thereof, which they sell and distribute in interstate commerce, and who truthfully represent that they are the manufacturers of the said articles. The acts and practices of respondents as set out in paragraphs 2 and 3 of these findings tend to and do divert trade from said competitors.

PAR. 6. In the regular course of their said business for more than a year last past respondents have affixed or caused to be affixed to their said fountain pens, pencils, and sets paper bands and labels bearing price marks of \$7 on the fountain pens, \$4 on the lead pencils, and \$11.50 on the sets, and in their said circulars and letters respondents have set out these prices and have represented that said prices were the ordinary and customary retail prices of the pens, pencils, and sets, respectively. The said pens, pencils, and sets so marked and labeled were sold by respondents to their said representatives and by them to the consuming public. The said prices were fictitious, false and exaggerated, and greatly in excess of the prices at which respondents' pens, pencils, and sets were usually and customarily sold to the consuming public. The prices paid respondents by their representatives during the said period were \$1.55 each for the pens, \$1.50 each for the pencils, and \$3.50 each for the sets. The said representatives sold the said articles to the consuming public at the usual and customary prices of \$2.50 for the pens, \$2.50 for the pencils, and \$5.50 for the sets.

PAR. 7. The use by respondents of false, fictitious, and exaggerated price marks in connection with the sale of fountain pens, pencils, and sets thereof, all as set out in paragraph 6 of these findings, had and has the tendency and capacity to mislead and deceive their representatives and through them a substantial part of the consuming public by causing them to believe that the said prices are the prices at which the said fountain pens, pencils, and sets, respectively, are sold to the public, and to cause them to purchase the said articles in that belief.

PAR. 8. There are among the competitors of respondent mentioned in paragraph 1 of these findings, many who manufacture, sell, and distribute, or sell and distribute, in interstate commerce fountain pens, pencils, and sets thereof, and who place upon said articles paper bands and labels marked with the prices at which the said articles, respectively, are usually and customarily sold to the consuming public. The acts and practices of respondents as set out in paragraph 6 of these findings tend to and do divert trade from competitors.

Order

11 F. T. C.

CONCLUSION

The acts and practices of respondents under the conditions and circumstances set out in the foregoing findings are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce in violation of section 5 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 answer of respondents and the evidence received at hearings, 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 Flora Levy and Sarah Lee, their agents, representatives, and employees, do cease and desist from—

(1) Representing by means of advertisements, letters, circulars, or otherwise that respondents are the manufacturers of the fountain pens, pencils, and sets thereof which they sell or offer for sale in interstate commerce, or that the said articles by them sold come direct from manufacturer to purchaser, unless and until such respondents or either of them actually own and operate or directly and absolutely control a factory or factories in which the said fountain pens, pencils, and sets sold by them or either of them are manufactured; or

(2) Offering for sale or selling in interstate commerce fountain pens, pencils, or sets thereof bearing upon them any band, label, or other mark indicating a false or fictitious price in excess of the price at which such articles, respectively, are ordinarily and customarily sold to the consuming public.

It is further ordered, That the said respondents shall within 30 days after the service of this order file with the secretary of the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

Complaint

IN THE MATTER OF
NORTHWEST CHAIR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1427. Complaint, Oct. 13, 1926—Decision, May 9, 1927*

Where a corporation engaged in the manufacture and sale of maple chairs resembling walnut or mahogany, as the case might be, depicted and represented said chairs in its catalogues, price lists, circulars and similar trade literature as "Walnut", and "Mahogany", respectively, and so sold the same, thereby placing in the hands of its dealer vendees the means of assisting and enabling them to misrepresent and sell such chairs to the consuming public as composed of walnut or mahogany, respectively, and to use the aforesaid designations and descriptions in its catalogues as evidence and confirmation by the manufacturer of the truth of such misrepresentation; with the capacity and tendency to mislead and deceive many of the trade and purchasing public into believing the chairs in question to be composed of walnut or mahogany, respectively, and to purchase the same in such belief, and with the effect of unfairly diverting trade from competitors dealing in chairs respectively made of the aforesaid woods and truthfully so represented by them to the trade and consuming public, and from competitors dealing in chairs neither so composed nor in anywise so represented by them:

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

Mr. Henry Miller for the Commission.

Hayden, Langhorne & Metzger, of Tacoma, Wash., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Washington corporation engaged in the manufacture of chairs, and in the sale thereof to dealers in various States, and with principal office and place of business in Tacoma, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, for about three years preceding the complaint, for the purpose of deceiving the purchasing public, falsely designated and described certain of its chairs in its catalogues, price lists, circulars and other trade literature supplied to its dealer vendees as "Walnut" and "Mahogany," the fact being