

IN THE MATTER OF  
UNITED STATES PENCIL COMPANY, INC.

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

*Docket 1905. Complaint, Jan. 21, 1931—Decision, Apr. 11, 1932*

Where a corporation dealing in pencils bought by it from the manufacturer (1) complete and ready for sale and made in certain cases pursuant to its instructions and specifications, or (2) in the rough for painting and imprinting by it and addition of tips and erasers by a separate concern, and in sale of aforesaid pencils to jobbers, large chain store and retail organizations, and large business houses for their own use, and neither owning, controlling, operating, nor interested in any factory making pencils from the raw material into the finished product, nor equipped itself to manufacture pencils from the raw material into the finished product;

Caused itself to be described in a paid listing in a trade directory as "Makers of finest quality lead pencils" and made no effort to have changed a free and unauthorized listing in an earlier edition of the same directory in which its name, under heading, "Pencils," was immediately followed with the abbreviation "Mfrs.";

With tendency and capacity to mislead and deceive jobbers, retailers and purchasing public into buying from it as and for a manufacturer of pencils, and thereby divert trade to it from competitors who are in fact such manufacturers and from retailers who do not represent themselves as such:

*Held*, That such practice, under the circumstances set forth, was to the prejudice of the public and competitors and constituted an unfair method of competition.

*Mr. G. Ed. Rowland* for the Commission.

*Miss Ruth Gottdiener*, of New York City, 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 New York corporation engaged in the sale and distribution of lead pencils to jobbers, retailers, and ultimate consumers in the various States and the District of Columbia, and with principal office and place of business in New York City, with misrepresenting business status or advantages and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that—

## Findings

Respondent, as charged, engaged as aforesaid, and neither manufacturing the pencils dealt in by it, nor owning, operating, or controlling any factory making the same, but purchasing its said pencils from the manufacturers completely finished in the case of about 50 per cent, and in the natural wood in the case of the others, which it paints and imprints with various names, addresses, and other identifying marks at its place of business, represented itself through trade directories and circulars as a manufacturer of lead pencils, authorizing and approving the following of its name in a trade directory by the abbreviation "Mfrs." and by the slogan, in a subsequent edition, "Makers of finest quality lead pencils," and falsely representing in circulars distributed to customers and prospective customers, "You save the jobber's profit by buying direct from us"; with effect of causing jobbers, retailers and the purchasing public to buy its pencils in the mistaken belief that said statements and representations were true, and with capacity and tendency so to do; all to the prejudice of the public and 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Federal Trade Commission.

Thereupon this proceeding came on for final hearing on the brief of counsel and the record, counsel for respondent having waived oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, United States Pencil Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York. It was incorporated in 1918 and has its office and principal place of business at 487 Broadway, in the City of New York, State of New York, where for more than one year last past it has been engaged in the business of selling and distributing lead pencils, pencil cases, and pencil sets, to jobbers, retailers, and ultimate consumers located at points in various States of the

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United States, and the District of Columbia. The officers of respondent are D. Teitelbaum, president, and Samuel Fingerbut, secretary and treasurer. Its sales for the year 1930 amounted to approximately \$300,000. Respondent causes its pencils, when sold, to be transported from its place of business in the City of New York, State of New York, through and into other States of the United States and the District of Columbia to said purchasers thereof at their respective points of location. In the course and conduct of its said business respondent is in direct and active competition with other individuals, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution of lead pencils in interstate commerce among the several States of the United States and the District of Columbia.

PAR. 2. Respondent sells its pencils throughout the United States, about 90 per cent of its business being done through the mails and personal solicitation of the larger accounts, the balance by traveling representatives. Respondent sells to F. W. Woolworth, S. S. Kresge Co., and the American News Co., for resale to the public, and to individual business firms, such as banks and large business houses for their own office use. It obtains its customers principally by advertising circulars, which it sends to names secured from trade directories of various kinds. Respondent also sends with its circulars sample pencils, and if the recipient likes the pencil he sends an order for a supply.

PAR. 3. In the course and conduct of its aforesaid business respondent buys all the pencils which it sells from various manufacturers and distributors thereof. About 50 per cent of the pencils which it buys are completely finished and ready for sale to the trade and public, and about 50 per cent are pencils in the rough, i. e., complete pencils in the natural raw cedar, without paint, printing, tips, or erasers on them. Respondent paints these pencils and imprints names thereon. Where it is necessary to put tip and erasers on such pencils, respondent sends them to another factory in which it has no interest of any kind, to have this work done. Pencils which are painted and finished, but without any name or other lettering imprinted on them, are known in the trade as "blanks." Respondent sells pencil blanks to jobbers, and also imprints names on pencils at the order of jobbers or individual consumers.

PAR. 4. Respondent also sells two brands of pencils under the names "Two Tone" and "Evergreen." These pencils are made for it by the General Pencil Co., a manufacturer of pencils in Jersey City, N. J. The pencil sold by respondent under the brand name Evergreen is made for it by the General Pencil Co. under specifications furnished said General Pencil Co. by respondent. These specifica-

tions cover the kind and quality of wood to be used in the pencil, the quality and degrees of hardness of the lead used, and the finish put on the pencil. General Pencil Co. follows respondent's directions as to the materials from which the Evergreen pencil is made, and buys the wood and lead from certain manufacturers for said pencil. Respondent keeps in touch with the manufacture of its Evergreen pencil by sending representatives to the factory of the General Pencil Co. from time to time to consult with reference to the manufacturing process. Respondent does not perform any operation of any kind in connection with the manufacture of the Evergreen pencil. Respondent sells its Evergreen pencils principally to consumers direct, only a limited quantity being sold to jobbers. Where Evergreen pencils are sold to jobbers, respondent gives the jobber a better price than it does to the consumer whom it sells direct. General Pencil makes a pencil which it sells under the brand name "Semi-Hex," in which it uses the same wood and lead as it uses in the Evergreen pencil which it makes for respondent.

PAR. 5. Respondent paints and imprints lettering on the pencil blanks which it buys. It has special machinery in its place of business for painting pencils and for printing names and lettering on them, and has four employees for the purpose. It does not put tips or erasers on the pencils which it sells, but has this work done for it under contract. Respondent does not do, and has no machinery or facilities for doing, any operations in connection with the manufacture of pencils. The blank pencils as received by respondent are complete and can be used to write with. Painting and imprinting, such as done by respondent, are finishing operations, and not manufacturing operations. Fifty per cent of the pencils sold by respondent are received by it complete and ready for sale to the trade and public, all operations including painting, imprinting, and the affixing of tips and erasers having been done by General Pencil Co., the manufacturer thereof.

PAR. 6. In the 1929 edition of Donnelly's Industrial Directory, Eastern District, the name of respondent appears under the heading Pencils, with the abbreviation "Mfrs." immediately following, together with its address, thereby representing that it is a manufacturer of pencils. In the 1930 edition of the same directory, under the heading Pencils, respondent's name appears as follows:

UNITED STATES PENCIL COMPANY, INC.

Makers of Finest Quality Lead Pencils

487 Broadway, New York City. Canal 0010

The 1929 listing was a free listing, and not an advertisement, and respondent did not authorize it, but made no effort to have the listing

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changed to show it was not a manufacturer. The 1930 listing was an advertisement, contracted for and paid for by respondent through its secretary and treasurer, who authorized the party soliciting the advertisement to write it out for his approval, which was done, and he approved the wording.

PAR. 7. On the advertising circulars sent out and distributed by respondent to jobbers, retailers, and ultimate consumers appears the wording "You save the jobber's profit by buying direct from us." Respondent is not a jobber of pencils, but is a distributor and sells to jobbers. Respondent is distributor for all the pencils made by General Pencil Co. which that company does not itself sell under its own trade-mark names. Pencils sold by respondent, except the Evergreen pencil, are sold both to jobbers and consumers, and in some cases the pencils are sold direct to large consumers for as much as 25 per cent less than the same pencils are sold to jobbers, but in all cases are sold to the consumer for the same price or less than they are sold to jobbers.

PAR. 8. Respondent is not a manufacturer of pencils, and does not own, control, operate, or have any interest in, any factory where pencils are made from the raw material into the finished product. The representation by respondent that it is a manufacturer of pencils, as hereinabove set forth, is false, deceptive, and misleading, and has the tendency and capacity to mislead and deceive jobbers, retailers, and the purchasing public into buying pencils from respondent in the mistaken belief that such representation is true, and thereby diverts trade to respondent from competitors who are in fact manufacturers of pencils, and from retailers of pencils who do not represent themselves as manufacturers.

## CONCLUSION

The practice of respondent, United States Pencil Co., Inc., of representing itself to be a manufacturer of pencils, under the conditions and circumstances set forth in the foregoing findings as to the facts, is to the prejudice of the public and respondent's competitors, and is an unfair method of competition in interstate commerce, and constitutes a violation 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."

## 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 respondent, the testimony taken and briefs filed herein, and the

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Commission having made its findings as to the facts and conclusion that the respondent has 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 respondent, United States Pencil Co., Inc., its officers, agents, representatives, and employees in connection with the sale and distribution of pencils in commerce between and among the several States of the United States and the District of Columbia cease and desist from representing in any manner, either directly or indirectly, that it is a manufacturer of pencils, unless and until said respondent actually owns, controls or operates a factory in which pencils are manufactured.

*It is further ordered*, That respondent shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Commissioner Ferguson dissents.

IN THE MATTER OF  
RELIANCE PENCIL CORPORATION

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

*Docket 1924. Complaint, Mar. 6, 1931—Decision, Apr. 11, 1932*

Where a corporation engaged in purchase of pencils both in the "rough" and as finished products, from the manufacturer thereof, and in the business of smoothing, polishing, painting, and stamping the former and attaching brass ferrules and erasers thereto at its factory for the performance of such so-called finishing operations, and in the sale to jobbers and retailers of its said pencils, which were (1) result of nearly two years' laboratory experiments and practical tests directed to development of desired smoothness, color, strength, and size of the lead used, as well as to matter of numerous brand names, shapes, and colors of the various pencils sold, and were (2) made for it by the manufacturer with cedar and lead specially prepared for it in accordance with its secret formulæ and specifications and subject in case of both substances to its continuing scrutiny and regular inspection and tests to secure quality and uniformity, but (3) came to it in all cases ready to sharpen and write with, due to prior completion by the manufacturer of the difficult and expensive operations necessary to bring the pencil to such stage,

Prominently displayed phrase "Manufacturers of pencils \* \* \*" immediately under its corporate name, upon letterheads, billheads, catalogues, circular letters, and other stationery and in advertisements in various trade magazines, and referred in catalogues to a "new modern plant" at a certain point, as the plant in which its pencils were made, and as "the home of Reliance Pencils," in which, "under continuous laboratory supervision, the entire process is carried on under one roof, under one control," and in a circular letter sent to customers made the statement that the "lead is blended by our exclusive process," facts being it was not a pencil manufacturer, and neither owned, controlled, operated, nor had any interest in any pencil factory, and plant in question was that of the manufacturer from which it purchased pencils dealt in by it as aforesaid, and which had an undisclosed financial interest in it, but in which it itself had no interest of any kind;

With tendency and capacity to mislead and deceive jobbers and retailers into buying pencils from it in the mistaken belief that aforesaid statements and representations were true, and thereby divert trade to it from competitors who as manufacturers in fact of pencils shared the trade advantage due to jobber's and retailer's preference to deal with the manufacturer by reason of latter's financial responsibility and assurance of securing uniform quality and refund or exchange of defective pencils:

*Held*, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. G. Ed. Rowland* for the Commission.

*Brodek, Raphael & Eisner*, of New York City, for respondent.