

Complaint

IN THE MATTER OF

HARRY SACHNOFF, DOING BUSINESS UNDER THE
TRADE NAME OF PARK ROW PEN COMPANY, AND
ARGO PEN-PENCIL COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2332. Complaint, Mar. 15, 1935—Order, Dec. 11, 1935*

Where an individual engaged in the business of assembling fountain pens, the parts of which it purchased from various jobbers, and in the sale of such pens, and pencils, at wholesale, in competition with the products of other dealers, assemblers and manufacturers; and a corporation similarly engaged, the stock of which was owned by said individual, his wife and son, who constituted, respectively, its president, treasurer, and secretary; in the course and conduct of their aforesaid businesses—

- (a) Held themselves out as manufacturers of such pens and pencils, and made use of corporate stationery, advertising matter, and invoices upon which were printed the words "Manufacturers of Pens and Pencils", and "Factory, Passaic, N. J.", notwithstanding the fact they neither owned controlled nor operated a plant or factory in which their said products were made, and said corporation did not own, operate or control a factory in said city; and
- (b) Caused pen points placed in certain of the fountain pens assembled and sold by them to be stamped or imprinted "DURIGOLD 14", notwithstanding the fact that said pen points were not made of gold or gold alloy and were not of 14-carat fineness, but, thinly gold-plated, were manufactured from stainless steel and chrome, and their cost was only a small proportion of what the price of the solid 14-carat points would have been;

With capacity and tendency to mislead and deceive many among the purchasing public and trade as to the composition of said fountain pen points, and into believing that in dealing with said individual and corporation they were patronizing a manufacturer and thereby benefiting through elimination of the middleman's profit:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Morton Nesmith for the Commission.

COMPLAINT

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

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Federal Trade Commission having reason to believe that Harry Sachnoff, doing business under the trade name and style of Park Row Pen Company, and Argo Pen-Pencil Company, Inc., a corporation has been and is using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Harry Sachnoff, doing business under the trade name of Park Row Pen Company, one of the respondents herein, with his principal place of business at 206-208 Broadway, New York City, N. Y., is now and has been engaged in the business of assembling and selling fountain pens at wholesale and transporting said pens between and among the different States of the United States. The respondent, Argo Pen-Pencil Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 206-208 Broadway, New York City, N. Y., and is likewise engaged in the business of assembling and selling fountain pens at wholesale between and among different States of the United States. The respondent, Harry Sachnoff is the sole owner of the Park Row Pencil Company and also is president and owner of virtually all of the capital stock of respondent, Argo Pen-Pencil Company, Inc. Said respondents, Harry Sachnoff, doing business under the trade name of Park Row Pen Company, and Argo Pen-Pencil Company, Inc., in the course and conduct of their said businesses, have caused and still cause the articles in which they deal to be transported from their said place of business into and through other States of the United States to various retailers located at points in different States of the United States. Said respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale and transportation of fountain pens at wholesale in commerce between and among the different States of the United States.

PAR. 2. Harry Sachnoff, doing business under the trade name of Park Row Pen Company, one of the respondents herein, and Argo Pen-Pencil Company, Inc., a corporation, the other respondent, in the course and conduct of their businesses, as aforesaid, in soliciting the sale of and selling their products in interstate commerce have represented and held themselves out to be manufacturers of fountain pens and pencils. The respondent, Argo Pen-Pencil Company, Inc., caused and still causes to be printed upon its letterheads, advertising matter and invoices, the following:

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Manufacturers of
Fountain Pens and Pencils
Office and Sales Room
206-208 Broadway
New York, N. Y.

Said respondent, on its invoices, further caused and still causes to be printed, the following:

Factory:
Passaic, N. J.

PAR. 3. The respondents, in the course and conduct of their businesses as aforesaid, have caused and still cause to be stamped or imprinted upon certain of the pen points, which they use in their fountain pens as assembled, the following:

DURIGOLD 14

Said fountain pens, so assembled with the above-described or imprinted pen points, have been and are sold by the respondents in interstate commerce. Said "Durigold 14" was so stamped or imprinted upon said pen points as to resemble and simulate the marking on solid gold pen points and carries the impression that respondents' products are of some kind of gold and are 14 carats in fineness.

PAR. 4. In truth and in fact, neither of the respondents is a manufacturer of fountain pens nor do they manufacture any parts of fountain pens, but purchase said parts from different companies and then assemble the pens. Neither of the respondents own or control any factory or plant which manufactures or produces fountain pens. The respondent, Argo Pen-Pencil Company, does not own, operate or control a factory at Passaic, N. J. In truth and in fact, the pen points which respondents caused to be imprinted or stamped "Durigold 14" are manufactured from steel and said points are thinly gold-plated and are not composed of gold or a gold alloy and are not of 14-carat fineness; all of which has the capacity and tendency to mislead and deceive the purchasers of respondents' products into the belief that when purchasing from respondents they are dealing with the manufacturer of the products purchased and are thereby gaining an advantage by eliminating the middlemen's profits, and that said pen points contain gold or some gold alloy of the equivalent of 14 carats in fineness.

PAR. 5. The respondents, Harry Sachnoff, doing business under the trade name of Park Row Pen Company, one of the respondents herein, and Argo Pen-Pencil Company, Inc., ship and deliver to their retail customers their products so branded and labeled, and said retailers resell said products to the consuming public.

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PAR. 6. There are among the competitors of respondents many persons, firms, and corporations who manufacture fountain pens and pencils and sell same in interstate commerce, and who truthfully hold themselves out as manufacturers; there are also among competitors of respondents many persons, firms, and corporations who assemble fountain pens and pencils and who do not represent themselves as manufacturers. Both of said classes of competitors sell their products in interstate commerce, and the fact that respondents hold themselves out to be manufacturers, and the further fact that respondents have caused their pen points to be marked, branded or labeled "Durigold 14", when said points are not composed of gold or a gold alloy, has unfairly diverted trade from and otherwise injured respondents' competitors in interstate commerce.

PAR. 7. The above alleged acts and things done by the respondents are all to the injury and prejudice of the public and of the competitors of respondents in interstate commerce and constitute unfair methods of competition in interstate 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on the 15th day of March 1935, issued and served its complaint in this proceeding upon respondents, Harry Sachnoff doing business under the trade name of Park Row Pen Company and the Argo Pen-Pencil Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, and the failure of respondents to file answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by Morton Nesmith, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence and brief in support of the complaint (respondents having waived filing of brief); and the commission having duly considered the

same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Harry Sachnoff is an individual doing business under the trade name and style of Park Row Pen Company. The respondent Argo Pen-Pencil Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. The principal place of business of both respondents is located at 206 Broadway, city of New York, State of New York. The respondent Harry Sachnoff, until, to wit, the year of 1931 did business under the trade name of Park Row Pen Company, but since said last named date, has discontinued said trade name with the exception of the use by him of certain guarantees bearing the name of Park Row Pen Company.

The respondent, Argo Pen-Pencil Company, Inc., was incorporated under the laws of the State of New York in 1927 or 1928 and said Harry Sachnoff is the president of said corporation, his wife and son are treasurer and secretary respectively, and all the stock is owned by them. Both of said respondents were and are engaged in the business of assembling and selling fountain pens and pencils at wholesale; the fountain pen parts are and were purchased from various dealers and assembled by respondents and sold and shipped to jobbers in various States of the United States other than the State of New York and are sold in competition with fountain pens and pencils of other dealers, assemblers, and manufacturers.

PAR. 2. The respondents in the course and conduct of their businesses as aforesaid represented and held themselves out to be manufacturers of fountain pens and pencils, and, on the stationery, advertising matter and invoices of the respondent, Argo Pen-Pencil Company, Inc., the words "manufacturers of pens and pencils" and "factory, Passaic, N. J." were and are printed.

PAR. 3. The respondents in the course and conduct of their businesses as aforesaid, caused certain pen points to be stamped or imprinted "DURIGOLD 14" and said pen points were placed in certain of the fountain pens assembled and sold by respondents in interstate commerce.

PAR. 4. In truth and in fact neither of said respondents own, control or operate a plant or factory in which their fountain pens or pencils are manufactured or produced, and the respondent Argo Pen-Pencil Co., Inc., does not own, operate or control a factory at Passaic, N. J.

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PAR. 5. In truth and in fact the pen points which respondents caused to be imprinted or stamped "DURIGOLD 14" are not composed of gold or gold alloy and are not 14-carat fineness but are manufactured from stainless steel and chrome and are thinly gold plated. Said pen points so imprinted cost respondents \$2.10 per gross and if solid 14-carat gold were used therein, said points would cost \$30.00 per gross.

PAR. 6. The acts, practices and methods of competition of respondents as described in paragraphs 2, 3, 4, and 5 hereof have had and have the capacity and tendency to mislead and deceive many among the purchasing public and the trade, that said fountain pen points contain gold or some gold alloy of the equivalent of 14-carat fineness and that when dealing with respondents they are dealing with a manufacturer and thereby gain the advantage by eliminating the middleman's profit.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings as to the facts are all to the injury and prejudice of the public and competitors of the respondents and unfair methods of competition in commerce and constitute a 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, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission therefore duly designated by it, in support of the charges of said complaint, brief by counsel for the Commission filed herein (respondents having waived filing of brief), and the Commission having made its findings as to the facts and its conclusion that said 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 therefore ordered, That the respondent Harry Sachnoff, doing business under the trade name of Park Row Pen Company, his agents, servants and employees, and the respondent Argo Pen-Pencil Company, Inc., its officers, agents or employees in connection with the sale or offering for sale in interstate commerce of fountain pens and pencils, forthwith cease and desist from:

(1) Directly or indirectly representing that they are manufacturers of fountain pens and pencils until and unless the said Harry Sachnoff, doing business under the trade name of Park Row Pen Company, and Argo Pen-Pencil Company, Inc., a corporation, engage in the manufacturing of pens or pencils, or absolutely own and control a factory wherein said articles are made or manufactured;

(2) Directly or indirectly representing that they or either of them own or control a factory at Passaic, N. J., unless and until they do own or control such a factory;

(3) Directly or indirectly representing, stamping or causing to be stamped fountain pen points or nibs "Durigold 14" unless and until said fountain pen points or nibs are 14 carat gold.

It is further ordered, That the respondents shall within 60 days after the service upon them 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 hereinabove set forth.

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IN THE MATTER OF

OLD TRUSTY DOG FOOD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2527. Complaint, Aug. 21, 1935—Decision, Dec. 11, 1935*

Where a corporation engaged in the sale of various brands of dog food, represented through labels and periodical and other advertising and in other ways, that its "Old Trusty Bovex" brand was "62½ percent Government inspected beef and beef products", facts being that, while its ingredients included, among others, meat and meat food products inspected and passed under the provisions of the Meat Inspection Act, and while it was made at an establishment where Federal Meat Inspection is maintained, it contained less than said percentage of Government inspected beef and beef products; with capacity and tendency to mislead and deceive purchasers and prospective purchasers in aforesaid respect:

Held, That such practices, under the conditions described above, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Joseph C. Fehr for the Commission.

Mr. James M. Cushing, of Boston, Mass., for respondent.

COMPLAINT

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, having reason to believe that Old Trusty Dog Food Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at Needham Heights, in the State of Massachusetts. It is now and for more than one year last past has been engaged in the manufacture of various brands of dog foods, including a brand designated by it as "Old Trusty Bovex", and in the sale and distribution thereof in commerce between and among various States of the United States. It has caused and still causes said products, when sold, to be shipped from its place of business in Needham Heights aforesaid to the