

Complaint

22 F. T. C.

IN THE MATTER OF
UNION PENCIL COMPANY, INC.

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

Docket 2584. Complaint Oct. 16, 1935—Order, Feb. 4, 1936

Consent order requiring respondent, its officers, etc., in connection with the offer for sale or sale in interstate commerce of pencils to cease and desist from representing through advertising, letterheads or other stationery or in any manner whatsoever that it holds and possesses a certificate of merit, its said pencils have been tested by the Bureau of Standards or have been tested for comparison with competitive products by an independent and unbiased agency, or will outlast other brands in the same price range three or four times or that it holds a medal of honor for the highest possible award for advertising pencils.

Before *Mr. John L. Hornor*, trial examiner.
Mr. William L. Pencke 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 Union Pencil Company, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Union Pencil Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 305 Broadway, in the city of New York, in the State of New York. Respondent is now and for several years last past has been engaged in the sale, offering for sale, and distribution of imprinted and advertising pencils in commerce among and between the various States of the United States, and in the District of Columbia, in the course and conduct of which respondent has caused its said pencil products, when sold, to be transported from its place of business in the city of New York, in the State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and to purchasers in the District of Columbia, and in the course and conduct of which business respondent

ent has been and now is engaged in competition with other corporations, firms, partnerships, and individuals engaged in like commerce.

PAR. 2. Respondent has sold and offered for sale and now sells and offers for sale its said pencil products in interstate commerce, as set forth in paragraph 1, by use of the mails, interstate carriers and other channels of interstate commerce, by means of advertising literature, circulars, billheads, and other forms of printed matter which have had and have a circulation in and through the various States of the United States and in the District of Columbia, and by means of agents and solicitors taking purchase orders for delivery of respondent's pencil products in and among the various States of the United States and in the District of Columbia, in the course and conduct of which said respondent has made and now makes false and misleading statements and representations, all to the injury of the public and the injury of respondent's competitors.

PAR. 3. In the course and conduct of the business of respondent, as aforesaid, and in the course and conduct of the advertising and promotion of said business, as aforesaid, respondent has made and now makes the following statements and representations, among others, to wit:

What Mileage do you get on a Pencil?

Certificate of Merit

A series of tests have proved that Union Pencils outlast other brands, in the same price range, by three to four times.

Bureau of Standards
Union Pencil Company, Inc.

Highest Possible Award
For Advertising Pencils
Medal of Honor, P. P. I. E.
San Francisco, 1915

PAR. 4. In the course and conduct of the business of said respondent as aforesaid and in the advertising, promotion, selling, and distribution of the said product, as aforesaid, respondent has falsely and misleadingly stated and now falsely and misleadingly states and represents that it holds and possesses a certificate of merit; that said certificate is issued by the Bureau of Standards; that its pencil products have been tested by the Bureau of Standards; that its pencil products had been tested for comparison with competing pencil products by an independent and unbiased agency for that purpose; that its pencil products "will outlast other brands in the same price range

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by three to four times", and that respondent holds a "highest possible award for advertising pencils Medal of Honor"; whereas, in truth and in fact said respondent does not hold or possess a certificate of merit or other evidence of recognition or merit for its pencil products issued by or emanating from the Bureau of Standards or any other governmental agency; respondent's pencil products have not been tested by the Bureau of Standards; respondent's pencil products have not been tested for comparison with competing pencil products by any recognized independent and unbiased agency for that purpose; respondent's pencil products will not outlast other brands of pencils in the same price range by three to four times, and respondent does not hold a highest possible award for advertising pencils Medal of Honor. It is further alleged that in the year 1931 by stipulation No. 835, entered into by and between the said respondent and the Federal Trade Commission, said respondent agreed to cease and desist from using the phrase, "highest possible award for advertising pencils Medal of Honor", or any other or similar words or expressions which import or imply or which may confuse, mislead and deceive purchasers into the belief that said award was "the highest possible award" and given for quality, instead of a diploma of honorable mention for a display of advertising pencils at the Panama Pacific Exposition in 1915, which stipulation said respondent has violated, by continuing, upon its billheads, the phrase, "highest possible award for advertising pencils Medal of Honor".

PAR. 5. The aforesaid false and misleading statements and representations so made by respondent in the course and conduct of his business, as aforesaid, have had and have the tendency and capacity to deceive and mislead, and to deceive and mislead purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's imprinted and advertising pencil products in lieu and instead of imprinted and advertising pencil products of respondent's competitors, in consequence of which trade has been and is diverted to respondent from its competitors who do not misrepresent their products, all thereby substantially injuring respondent's competitors and competition in interstate commerce.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed the 16th day of October, 1935, and the answer to said complaint filed January 16, 1935, by Union Pencil Co., Inc., respond-

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ent herein, in which answer the said respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding, and that it consents that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

It is hereby ordered, That the respondent, Union Pencil Co., Inc., its officers, directors, agents, representatives, and employees, in connection with the offering for sale or selling in interstate commerce of pencils, do hereby cease and desist:

1. From making representations through advertising, letterheads, or other stationery, or in any manner whatsoever, that it holds and possesses a certificate of merit; that its pencil products have been tested by the United States Bureau of Standards; that its pencil products had been tested for comparison with competing pencil products by an independent and unbiased agency for that purpose; and that its pencil products will outlast other brands in the same price range by three or four times.

2. From making representations through advertising, letterheads, or other stationery, or in any manner whatsoever, that it holds a medal of honor as the highest possible award for advertising pencils.

It is further ordered, That respondent, within 60 days from the notice hereof, file with the Commission a report in writing, setting out in detail the manner and form in which it has complied with the order of the Commission herein set forth.

IN THE MATTER OF
VERNON SEITZ AND RAYMOND G. SEITZ, TRADING AS
WINONA MONUMENT COMPANY

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

Docket. 2437. Complaint, June 17, 1935—Decision, Feb. 6, 1936

Where a firm, engaged in the manufacture and sale of granite and other monuments and memorials, sold as Barre granite monuments products not in fact made of said highly reputed product from the Barre quarries in Vermont, but made of cheaper granite, and inferior in appearance and lasting qualities to those made from the genuine substance; with result that the purchasing public was defrauded by such sales, and with capacity and tendency to deceive purchasers of said products and divert business from other competing manufacturers who do not make such substitutions: *Held*, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Before *Mr. John W. Bennett*, trial examiner.

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Lamberton & Lamberton, of Winona, Minn., for respondents.

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 Vernon Seitz and Raymond G. Seitz, copartners, trading as Winona Monument Company, hereinafter referred to as respondents, have been and are 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. Respondents, Vernon Seitz and Raymond G. Seitz, are copartners, trading as Winona Monument Company, with their principal place of business located in the city of Winona in the State of Minnesota. They are now and for more than two years last past have been engaged in the business of manufacturing, among other kinds, granite monuments and memorials, and of the sale thereof, between and among the various States of the United States. They have caused and still cause such granite monuments and me-