

Complaint

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IN THE MATTER OF
ARGO PEN-PENCIL COMPANY, INC., AND HARRY
SACHNOFF

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

Docket 8169. Complaint, July 7, 1937—Decision, Feb. 7, 1939

Where a corporation and an individual engaged at same address in assembling fountain pens and pencils, and in selling assembled products to jobbers and dealers in other States, in competition with fountain pens and pencils of other dealers, assemblers, and manufacturers also engaged in interstate commerce—

Caused to be stamped or imprinted upon certain of the pen points used by them in the fountain pens which they assembled, figure and letters "14K" or "14KT," in prominent and conspicuous type, together with words "Durium" or "Duripoint," as case might be, and words "Gold plate" in type of approximately half the size of numbers and letters "14KT," and at a distance therefrom so as to be completely, or almost completely, obscured through insertion of pen points to sufficient degree within barrel of pens, and thus imitated and simulated the stamping or marking on gold pen points of 14 karat fineness and carried false impression that their said products were composed of some kind of gold or of gold alloy of such fineness, facts being they were made from stainless steel thinly gold plated;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all said representations were true, and with result, as direct consequence of such belief thus induced, that a number of the consuming public purchased a substantial volume of its said products, and trade was unfairly diverted to it from those engaged in preparation, distribution and sale of fountain pens in commerce, and who truthfully brand or label the same; to the injury of competition in commerce among the States and in the District of Columbia:

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

Before *Mr. Miles J. Furnas*, 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 Federal Trade Commission, having reason to believe that the Argo Pen-Pencil Co., Inc., a corporation, and Harry Sachnoff, an individual, 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. 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, with its principal place of business at 220 Broadway, in the city of New York, State of New York. The respondent, Harry Sachnoff, is an individual, doing business at the same address. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, are engaged in the business of assembling, selling, and distributing fountain pens and pencils at wholesale, between and among the different States of the United States. The respondent, Harry Sachnoff, is the president of, and owner of virtually all of the capital stock of, the Argo Pen-Pencil Co., Inc. In the course and conduct of their said business the respondents have caused and still cause the fountain pens and pencils in which they deal to be transported from their said place of business in New York into and through other States of the United States to various retailers located at points in such other States. Said respondents are in competition with other individuals, partnerships and corporations engaged in the business of assembling, selling, and transporting fountain pens and pencils in commerce between and among the several States of the United States.

PAR. 2. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, in the course and conduct of their said business as aforesaid, in soliciting the sale of and selling their fountain pens and pencils in interstate commerce, have caused and still cause to be stamped or imprinted upon certain of the pen points which they use in the fountain pens so assembled by them, the following:

Duripoint

14

KT.

Gold plate

Said fountain pens so assembled with the above-described and imprinted pen point, have been and are sold by the respondents in commerce as herein described. The words "Gold plate" appearing on the above-described pen points are imprinted or stamped below and at such a distance from the figures and letters "14 KT." that when the pen points are inserted to a sufficient degree within the barrel of the pens, the said words "Gold plate" are completely or almost completely obscured or concealed. As a result, when the pen point is inserted to a sufficient degree in the barrel of the pen with only the remaining letters, words, and figures, "Duripoint, 14 KT." appearing, said words, letters, and figures imitate and simulate the stamping and marking on solid

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gold pen points of 14 carat fineness and carry the impression that respondents' products are composed of some kind of gold or gold alloy of 14 carats in fineness.

PAR. 3. In truth and in fact the pen points which respondents cause to be imprinted or stamped "Duripoint 14 KT. Gold plate" are manufactured from steel or chrome rustless steel, thinly electroplated by a gold wash process. Said points are not composed of gold or a gold alloy and are not 14 carats in fineness.

PAR. 4. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, ship and deliver to their retail customers their fountain pens with the pen points so branded and stamped and said retailers resell said products to the consuming public so branded and stamped.

PAR. 5. There are among the competitors of the respondents many persons, firms, and corporations who manufacture, assemble, sell, and distribute fountain pens and pencils in interstate commerce and who truthfully brand or label their products.

PAR. 6. The acts, practices, and representations of the respondents herein detailed, in connection with the offering for sale and sale of its fountain pens, were calculated to, had and now have the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that said pen points are made of gold or some gold alloy of the equivalent of 14 carats in fineness and into the purchase of respondents' fountain pens in and on account of such beliefs so induced. Further, the branding or stamping of said pen points by the respondents in the manner herein described places in the hands of retail dealers of their products an instrument and a means whereby such dealers may commit a fraud upon purchasers by inserting the pen points into the barrels of the pens to such an extent that the words "Gold plate" become wholly or partially concealed and not clearly readable if such had not theretofore been done and thus mislead and deceive said purchaser into the erroneous belief above described and into the purchase of said products on account thereof. As a result trade has been unfairly diverted from respondents' competitors and said competitors have been otherwise injured as a result of respondents' practices 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 7th day of July 1937, issued and served its complaint in this proceeding upon respondent Argo Pen-Pencil Co., Inc., and Harry Sachnoff, 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 respondent 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 Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence were 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 complaint (respondent 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 Argo Pen-Pencil Co., Inc. 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 220 Broadway, city of New York, State of New York. Said respondent Harry Sachnoff is an individual doing business at the same address. Said respondents Argo Pen-Pencil Co., Inc. and Harry Sachnoff are engaged in the business of assembling and selling fountain pens and pencils at wholesale; said fountain pen parts are and were purchased from various manufacturers and dealers of said pens and assembled by respondents and sold and shipped from said respondents' place of business located in the State of New York to jobbers and dealers 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, as-

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semblers, and manufacturers who are also engaged in interstate commerce.

PAR. 2. Said respondents, Argo Pen-Pencil Co., and Harry Sachnoff, in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their fountain pens and pencils in interstate commerce, have caused and still cause to be stamped or imprinted upon certain of the pen points which they use in the fountain pens so assembled by them, the following:

Durium 14

K

Gold Plate

and

Duripoint

14Kt.

Gold Plate

Said fountain pens so assembled, with the above described and imprinted pen points, have been and are sold by respondents in commerce as herein described. The words "Gold plate" appearing on the above-described pen points are imprinted or stamped below and at such distance from the figures and letters "14Kt." that when the pen points are inserted to a sufficient degree within the barrel of the pens, the said words "Gold plate" are completely or almost completely obscured and concealed. As a result, when the pen point is inserted to a sufficient degree in the barrel of the pen with only the remaining letters, wording and figures "Durium 14K" and "Duripoint 14Kt." appearing, said words, letters, and figures imitate and simulate the stamping or marking on gold pen points of 14 karat fineness and carry the impression that said respondents' products are composed of some kind of gold or gold alloy of 14 carat in fineness.

In truth and in fact, the pen points which said respondents cause to be imprinted or stamped "Duripoint 14" and "Durium 14K" are not composed of gold or gold alloy and are not 14 carat fineness, but are manufactured from stainless steel and are thinly gold plated. Also, on said pen points the number and letters "14Kt." are in prominent and conspicuous type, and the words "Gold plate" are in type approximately half the size of said numbers and letters "14Kt."

PAR. 3. Each and all of the false and misleading statements and representations made by respondents as heretofore set forth in offering for sale and selling their products had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are

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true. As a direct result of these mistaken and erroneous beliefs induced by the acts and misrepresentations of said respondents as heretofore enumerated, a number of the consuming public purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of preparing, distributing, and selling fountain pens in commerce among and between the various States of the United States who truthfully brand or label such fountain pens. In consequence thereof injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The practices of 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 of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all of the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Argo Pen-Pencil Co., Inc., a corporation, its officers, and respondent, Harry Sachnoff, and their respective agents and employees, directly or through any corporate or other device, in connection with the assembling, offering for sale, sale, and distribution of fountain pens and fountain pen points or nibs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of brands, marks or stamping containing the letters "K" or "KT" either alone or in conjunction with any other letters, figures, words, or designs indicative of gold carat fineness, or through any other means or device, or in any manner that their plated fountain pen points or nibs are gold of any specific carat fineness or are gold.

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2. Using brands, marks, or stamping containing the letters "K" or "KT" in conjunction with other letters or words indicative of gold plating on their plated fountain pen points or nibs unless such letters or words indicative of gold plating appear in immediate conjunction with the letters "K" or "KT" in equally prominent and conspicuous type and are so located on said fountain pen points or nibs as to be incapable of being concealed.

It is further ordered, That respondents shall, within 60 days after 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 this order.

Complaint

IN THE MATTER OF

THEODORE H. KOOLISH, INDIVIDUALLY AND TRADING
AS UNIVERSAL SPECIALTIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3184. Complaint, July 22, 1937—Decision, Feb. 7, 1939*

Where an individual engaged in offer and sale of various articles of merchandise, including, among others, rotary and pendulum clocks, radios, electric shavers, and cameras; in soliciting and distributing his said products through various devices and plans of merchandising which he furnished and which involved operation of games of chance, gift enterprises, or lottery schemes through which such merchandise was distributed to consumers wholly by lot or chance—

Distributed to public certain literature, instructions, and sales outfits including paper push cards, order blanks, and advertisements depicting his merchandise, and certain circulars explaining his plan of selling same, under which merchandise premiums or prizes were allotted to operators of the cards, and in accordance with which, as case might be, customers paid for chances amounts determined by numbers pushed, or nothing, and as extra winners, in case of some, received for certain numbers Ever Sharp Pencils, and received clock or other item being thus distributed, in accordance with success or failure in selecting feminine name corresponding to that concealed under card's master disk, and thereby conducted lotteries, and placed in the hands of others means of conducting lotteries, in sale of his said merchandise, contrary to public policy as long established by the common law and criminal statutes and to an established policy of the United States Government, and in competition with those engaged in sale and distribution in similar commerce of like and similar articles and who do not sell their merchandise by use of lotteries or games of chance;

With result that many purchasers were attracted by element of chance involved in his said sales method, and were thereby induced to buy his said products in preference to same or similar goods of competitors who did not and do not use such or equivalent methods, and public, by reason of such preference, purchased substantial volume of his said goods and trade was unfairly diverted to him from competitors aforesaid:

Held, That such acts and practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., 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