

IN THE MATTER OF
THE WAHL COMPANY

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

Docket 3836. Complaint, June 27, 1939—Decision, Oct. 31, 1939

Where a corporation engaged in manufacture of its "Eversharp" fountain pens and in sale and distribution of such pens to purchasers thereof at their respective points of location in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid; in advertising its said pens in magazines and other publications of general circulation throughout the various States and in said District, and in circulars and other literature which were distributed to persons in various States and in said District—

- (a) Represented, through use of term "Leak Proof" and through such statements, among others, as "Trust it Anywhere * * * Can't Leak!" and depiction showing pen, uncapped, on white muff with point at slanting position and lower than other end, that said pens would not leak; and
- (b) Represented that its pens were equipped with a special device which would prevent their leaking, through such statements as "* * * won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on," and other statements similarly stressing effectiveness of said "Safety Ink Shut-Off," together with depictions purporting to illustrate such effectiveness as well as construction of its said pens;

Facts being that said "Shut-Off" device, designed to prevent ink from flowing into feed duct of pen from reservoir in barrel when cap of pen was screwed tightly over pen point, did not prevent ink in feed duct of pen immediately prior to attachment of cap from leaking into cap after it was screwed tightly over point, and such ink would leak into cap of pen when it was shaken or jostled, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions, and under certain circumstances ink could and would leak or escape from said fountain pens equipped with such device when the pens were uncapped and the points exposed, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions; and

- (c) Represented that their said pens held "more than double the volume of ink," facts being they did not hold more than twice as much ink as pens offered and sold by competitors, but had an ink capacity which was substantially less than such amount;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase, because of such belief, of substantial quantities of its said pens, and with result, as direct consequence, that trade in commerce was diverted unfairly to it from its competitors aforesaid:

Held, That such acts and practices, under the circumstances set out, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. Karl Stecher for the Commission.

Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The Wahl Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the 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, The Wahl Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its office and principal place of business located at 1800 Roscoe Street in the city of Chicago, State of Illinois. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling and distributing fountain pens designated "Eversharp." Respondent causes said fountain pens, when sold, to be transported from its aforesaid place of business in the State of Illinois, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the business of selling and distributing fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said Eversharp fountain pens, the respondent has caused various statements and representations relative to said fountain pens to be inserted in advertisements in magazines, periodicals, and other publications hav-

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ing a general circulation throughout the various States of the United States and the District of Columbia, and in circulars and other literature, which are distributed to persons situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

In one of respondent's said advertisements there is depicted one of respondent's Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off," resting on a white muff. The pen is uncapped with the point exposed, and is in a slanting position so that the point thereof is lower than the other end of the pen. Directly beneath this depiction is the following statement in large and conspicuous type:

TRUST IT ANYWHERE * * * THE EVERSHARP PEN CAN'T LEAK!

Respondent also causes the following statements and representations to be inserted in various of the aforesaid advertisements relative to said fountain pens:

The Eversharp Pen won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on.

Leak Proof.

Careful, Mister, Careful—That fountain pen in your coat pocket is upside down. And—if it's an ordinary fountain pen—you're likely to find, when you go to sign your next check, that ink has leaked from the pen barrel into the cap. Only Eversharp has a "stopper" that prevents such leakage—only Eversharp has the *Safety Ink Shut-Off*.

If you run for a trolley or dash through traffic, ink can't be jounced out of the pen barrel and into the cap—Eversharp's Safety Ink Shut-Off sees to that!

Get one for your wife, too—* * * whether she swings her bag—drops it—or turns it upside down—the ink just can't leak *into the cap of the pen*.

Screw the cap firmly in place and it closes a tiny valve—prevents ink flooding from the pen barrel into the cap when the pen is jounced or subjected to high-altitude air pressure and temperature changes.

The Eversharp pen holds more than double the volume of ink.

In one of said advertisements there are depictions which purport to illustrate the effectiveness of the so-called "Safety Ink Shut-Off," with which said Eversharp pens are equipped, in preventing said pens from leaking. One depiction designated "Uncorked" purports to represent a cross-section of the pen as it is uncapped and with the pen point exposed. The barrel of the pen and the feed mechanism from the barrel to the pen point are shown to be filled with ink. The other depiction in said advertisement purports to represent a cross-section of the pen as it is when the cap is screwed tightly over the pen point. The barrel of the pen is shown to be filled with ink but the feed mechanism from the barrel to the pen point is devoid of ink.

PAR. 4. Through the use of the aforesaid statements and representations by the respondent, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that ink cannot leak from its Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when the pen is uncapped and the pen point exposed; that ink cannot leak from said pen into the cap of the pen when the cap is screwed tightly over the pen point, and that Eversharp pens possess more than twice as much ink capacity as the fountain pens offered for sale and sold by competitors of the respondent.

PAR. 5. The aforesaid statements and representations by respondent relative to the Eversharp fountain pens are false and misleading. Ink can leak from respondent's said fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when said pens are uncapped and the pen points exposed, and ink does leak therefrom when the pens are shaken or jostled. Ink can also leak from said fountain pens, equipped with said device, into the caps of the pens when the caps are screwed tightly over the pen points. The so-called "Safety Ink Shut-Off" device is designed to prevent ink from flowing into the feed mechanism of the pen from the barrel thereof when the cap of the pen is screwed tightly over the pen point. Said device does not prevent the ink which is in the feed mechanism of the pen immediately prior to the attachment of the cap from leaking into the cap of the pen after the cap is screwed tightly over the pen point, and such ink does leak into the cap of the pen when the pen is shaken or jostled.

In truth and in fact said Eversharp pens do not hold more than twice as much ink as the fountain pens offered for sale and sold by competitors of the respondent. In fact, such pens have an ink capacity of substantially less than said amount.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said fountain pens because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective fountain pens do not leak and who do not misrepresent the ink capacity of their respective fountain pens. In consequence thereof injury is being, and

has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, on June 27, 1939, issued and subsequently served its complaint in this proceeding upon respondent charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, W. T. Kelley, chief counsel for the Federal Trade Commission, and Winston, Strawn & Shaw, counsel for respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently approved by the Commission and was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and said stipulation as to the facts, and the Commission having duly considered the same and being now 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Wahl Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its office and principal place of business located at 1800 Roscoe Street in the City of Chicago, State

of Illinois. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing fountain pens designated "Eversharp." Respondent causes said fountain pens, when sold, to be transported from its aforesaid place of business in the State of Illinois, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the business of selling and distributing fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said Eversharp fountain pens, the respondent has caused various statements and representations relative to said fountain pens to be inserted in advertisements in magazines, periodicals, and other publications having a general circulation throughout the various States of the United States and in the District of Columbia, and in circulars and other literature, which are distributed to persons situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

In one of respondent's said advertisements there is depicted one of respondent's Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off," resting on a white muff. The pen is uncapped with the point exposed, and is in a slanting position so that the point thereof is lower than the other end of the pen. Directly beneath this depiction is the following statement in large and conspicuous type:

"TRUST IT ANYWHERE. * * * THE EVERSHARP PEN CAN'T LEAK!"

Respondent also caused the following statements and representations to be inserted in various of the aforesaid advertisements relative to said fountain pens:

The Eversharp Pen won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on.

Leak Proof.

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Careful, Mister, Careful—That fountain pen in your coat pocket is upside down. And—if it's an ordinary fountain pen—you're likely to find, when you go to sign your next check, that ink has leaked from the pen barrel into the cap. Only Eversharp has a "stopper" that prevents such leakage—only Eversharp has the *Safety Ink Shut-Off*.

If you run for a trolley or dash through traffic, ink can't be jounced out of the pen barrel and into the cap—Eversharp's Safety Ink Shut-Off sees to that.

Get one for your wife, too— * * * whether she swings her bag—drops it—or turns it upside down—the ink just can't leak *into the cap of the pen*.

Screw the cap firmly in place and it closes a tiny valve—prevents ink flooding from the pen barrel into the cap when the pen is jounced or subjected to high-altitude air pressure and temperature changes.

The Eversharp pen holds more than double the volume of ink.

In one of said advertisements there are depictions which purport to illustrate the effectiveness of the so-called "Safety Ink Shut-Off," with which said Eversharp pens are equipped, in preventing said pens from leaking. One depiction designated "Uncorked" purports to represent a cross-section of the pen as it is uncapped and with the pen point exposed. The reservoir in the barrel of the pen and the feed duct from the reservoir to the pen point are shown to be filled with ink. The other depiction in said advertisement purports to represent a cross-section of the pen as it is when the cap is screwed tightly over the pen point. The reservoir in the barrel of the pen is shown to be filled with ink, but the feed duct from the barrel to the pen point is devoid of ink.

PAR. 4. Through the use of the aforesaid statements and representations by the respondent, and others of similar import or meaning not herein set out, the respondent has represented, directly or by implication, that ink cannot leak from its Eversharp fountain pens, equipped with the so-called "Safety Ink Shut-Off" device, when the pen is uncapped and the pen point exposed; that ink cannot leak from said pen into the cap of the pen when the cap is screwed tightly over the pen point, and that Eversharp pens possess more than twice as much ink capacity as the fountain pens offered for sale and sold by competitors of the respondent.

PAR. 5. The aforesaid statements and representations by respondent relative to its Eversharp pens are inaccurate and misleading. The so-called "Safety Ink Shut-Off" device, with which some of respondent's fountain pens are equipped, is designed to prevent ink from flowing into the feed duct of the pen from the reservoir in the barrel thereof when the cap of the pen is screwed tightly over the pen point. Said device does not prevent the ink which is in the feed duct of the pen immediately prior to the attachment of the cap from leaking into the cap of the pen after the cap is screwed tightly over the pen point, and such ink does leak into the cap of the pen when

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the pen is shaken or jostled, but in no greater amount than it does in the case of other high quality fountain pens not so equipped, and only under substantially the same conditions.

Under certain conditions ink can, and does, leak or escape from respondent's said fountain pens equipped with the "Safety Ink Shut-Off" device, when said pens are uncapped and the pen points exposed, but in no greater amount than it does in the case of other high quality fountain pens not equipped with the "Safety Ink Shut-Off," and only under substantially the same conditions.

Eversharp fountain pens do not hold more than twice as much ink as the fountain pens offered for sale and sold by competitors of the respondent. In fact, such pens have an ink capacity of substantially less than said amount.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said fountain pens because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, The Wahl Co., as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made

its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Wahl Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fountain pens, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Leak-Proof" or any other term or terms of similar import or meaning to designate or describe respondent's fountain pens, or in any other manner, that the respondent's fountain pens will not leak, unless and until said fountain pens are so designed and constructed that they will not leak.

2. Representing that respondent's fountain pens are equipped with any special or patented device which will prevent leakage unless and until said fountain pens are so equipped that no leakage will occur.

3. Misrepresenting the ink capacity of its fountain pens.

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

Complaint

IN THE MATTER OF

BRUNSWICK WORSTED MILLS, INC., AND GEORGE O.
LECKIE AND HENRY C. HASKELL, TRADING AS
LECKIE & HASKELL .COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3880. Complaint, Aug. 26, 1939—Decision, Oct. 31, 1939*

Where a corporation engaged in manufacture of worsteds and other woolen fabrics, and in sale thereof to manufacturers of men's suits and other articles of merchandise, and two individuals, engaged as exclusive agents, practically, in sale of fabrics made by said corporation, and in substantial competition, as aforesaid, with others engaged in selling and distributing various woolen fabrics in commerce among the various States—

Offered and sold said worsted and other products or fabrics made by corporation in question from mixture of fibers consisting of 80 percent wool and of 20 percent rayon, indistinguishable, or practically indistinguishable, as interwoven with wool as aforesaid, by manufacturers and consuming public from materials and garments made entirely from wool, without disclosing, by tags, labels, invoices, advertising, or in any other sales promotional descriptions or representations, or in any other way, that products or fabrics in question contained rayon in such or in any other substantial amount;

With capacity and tendency to mislead manufacturers of garments and other articles of merchandise and purchasers thereof into accepting same as being composed entirely of wool, and as understood from word "worsted," unqualified, by manufacturing and consuming public, as being such all wool fabrics having particular weave or construction and, in case of garments or other articles made therefrom, as being entirely of wool, and with result that number of manufacturers, dealers, and members of purchasing public bought substantial volume of their products, and trade was diverted unfairly to them from competitors also engaged in sale and distribution of woolen fabrics in commerce and who fully disclose constituent fibers of which their fabrics are composed:

Held, That such acts and practices, and each of them, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.

Mr. Roger B. Coulter of Sawyer, Hardy, Stone & Morrison, of Boston, Mass., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that said Brunswick