

IN THE MATTER OF

UNION FOUNTAIN PEN COMPANY, AND PAULINE JOAB,
ISADORA SANDROW AND LOUIS MORRISON

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

Docket 3522. Complaint, Aug. 2, 1938—Decision, Aug. 6, 1940

Where a corporation and three individuals, who were officers thereof, managed, directed, and controlled its policies, practices, and business affairs, and participated in below acts and practices, engaged in sale and distribution of fountain pens to purchasers in other States and in District of Columbia, and in thus offering and selling to wholesalers certain pens at 33½ cents each, in substantial competition with others also engaged in such sale and distribution of fountain pens and including many who are unwilling to employ methods used by them, as below set forth, or any similar methods involving use of misleading and deceptive representations in sale of their respective products, and who do not place in the hands of others means of deceiving public in regard thereto—

- (a) Offered and sold their said "Tourist" pens with price mark or band affixed to each disclosing figure \$3.75, and designation "The Tourist," wrapped in so-called "Guaranteed Lifetime Service" "certificate"; and
- (b) Represented their said "Tourist" pens as "custom-built" in advertising thereof;

Facts being pens' regular retail price was from 89 cents to \$1, purported resale price placed thereon was greatly exaggerated and fictitious and much in excess of that contemplated and in no wise represented pens' regular retail price or value, neither pens nor parts were, as understood by purchasing public from term "custom-built," "hand-made," but were assembled by them from parts purchased from different manufacturers, and they were not, as thus understood, "custom-built" nor with points such as last, ordinarily, two years or thereabouts, of grade and quality that would last for lifetime of purchaser, and they did not make repairs and replacements without cost to purchaser, but only upon payment of postage and insurance;

With result of placing in hands of retailers, through practice of affixing said price mark or band, means by which purchasing public was misled or deceived as to pens' true retail price and value, and of leading said public, through such so-called "Guarantee," to believe that product was of grade and quality that would last for purchaser's lifetime, with any repairs necessary made without cost to purchaser, and of misleading and deceiving it further as to real grade and quality of said pens, thus banded, and into belief that they were in fact of grade and quality which ordinarily sell for and have retail value of \$3.75, and were "custom-built" or "hand-made," and with effect of misleading and deceiving substantial portion thereof into erroneous and mistaken belief that said pens did in fact have such value and ordinarily sell for said sum, and were "custom-built" or "hand-made," with repairs and replacements without cost to purchaser, and of causing such portion of public, because of said erroneous and mis-

taken belief, to purchase said pens, and thereby unfairly divert trade to them from their competitors in commerce; to injury of said competitors and that of public:

Held, That such acts and practices, 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.

Before *Mr. John J. Keenan* and *Mr. Miles J. Furnas*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Block & Shlivek, of New York City, 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 the Union Fountain Pen Co., a corporation, doing business as "Morrison Fountain Pen Co.," and Pauline Joab, Isadora Sandrow, and Louis Morrison, individually and as officers of said corporation, hereinafter referred to as respondents, have 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, Union Fountain Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 79 Fifth Avenue, city of New York, State of New York. Respondent, Union Fountain Pen Co., also trades as Morrison Fountain Pen Co. Said respondent is engaged in the manufacture of fountain pens known as "Morrison's" and "Morrison Pens." Respondents, Pauline Joab, Isadora Sandrow, and Louis Morrison, whose address is 79 Fifth Avenue in the city of New York, State of New York, are officers of the aforesaid respondent corporation and manage, control, and direct the policies, practices, and business affairs of said corporation, and participate in the acts and practices herein charged.

The above-named corporate respondent caused and causes its products, when sold, to be transported from its place of business in New York City in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

Respondent corporation now maintains, and for more than 2 years last past has maintained, a course of trade in the aforesaid fountain

pens so sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondent corporation, in the course and conduct of its business, is now selling and distributing in commerce, and has been for more than 2 years last past selling and distributing in commerce, certain fountain pens designated as "No. 90 Morrison Tourist Pens," which have been and are now uniformly banded with a price mark of \$3.75, and which are sold to wholesalers at an average cost of $33\frac{1}{2}$ cents each, and to retailers at an average cost of 50 cents each, and have been, and are, customarily retailed to the ultimate purchaser at from 89 cents to \$1. In truth and in fact the said fountain pens of respondent corporation are not of \$3.75 value and are not equal in value or price to fountain pens having such value or price, but are of the type having a value of much less than \$3.75, and are ordinarily sold in the usual course of trade for approximately the sum of 89 cents or \$1 and were never intended to be sold for \$3.75.

PAR. 3. In some of its literature the respondent corporation represents, and has for more than 2 years last past represented, that the pen point or nib of the "No. 90 Morrison Tourist Pen" is 14-carat gold, by the use of a placard or poster upon which appears a large picturization of a fountain pen with the figures and letters "14Kt." on the point or nib thereof. Although the pen point or nib itself does not bear this mark, a substantial portion of the purchasing public is nevertheless led to believe from these pictorial representations that said pens are equipped with a 14-carat point or nib, when in truth and in fact said points do not contain such a carat fineness and are of inferior quality. Said fountain pens are and have been represented as "custom built" and are sold under a purported "guaranteed lifetime service." These representations convey to a substantial portion of the purchasing public the impression that special care has been employed in the construction of said pens, and that they are guaranteed for life. In truth and in fact respondents do not employ any special care in the construction of said pens nor is the lifetime guarantee provision fully carried out by the respondents.

PAR. 4. There are among the competitors of the respondents hereinabove described corporations, partnerships, and individuals likewise engaged in the sale and distribution of fountain pens in commerce between and among the various States of the United States and in the District of Columbia, who do not misrepresent the price of their products or falsely represent their products, but who truthfully represent the same.

PAR. 5. The acts and practices of the respondents as aforesaid in using said price labels or bands showing the price of said pens to

be "3.75," said representations to the effect that said fountain pen is custom built and sold under a lifetime guarantee, and said pictorial representations to the effect that the pen point or nib is 14-carat gold, have a capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondents' said fountain pen is in truth and in fact of the value of, and ordinarily sells for, the sum of \$3.75, that the point or nib of said pen is 14-carat gold, and that said pen is of a grade, quality, and value equal to pens which ordinarily sell for the sum of \$3.75 and up; and cause many members of the purchasing public, on account of said erroneous and mistaken belief, to purchase fountain pens from respondents, thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of such competitors and the injury of the public.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 2d day of August A. D. 1938, issued, and thereafter served, its complaint in this proceeding, charging respondents, Union Fountain Pen Co., a corporation, Pauline Joab, Isadore Sandrow, and Louis Morrison, with unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, attorney for the Commission, and in opposition to the allegations of the complaint by Max Shlivek, counsel for the respondents, before John J. Keenan and Miles J. Furnas, examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence and briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the matter, 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Union Fountain Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 79 Fifth Avenue, in the city of New York, State of New York. Respondents, Pauline Joab, Isadore Sandrow (named in the complaint as Isadora Sandrow), and Louis Morrison are officers of the aforesaid corporation and manage, direct, and control the policies, practices, and business affairs of said corporation and participated in the acts and practices alleged in the complaint.

For more than 1 year prior to the issuance of the complaint herein, the above-named respondents have been, and now are, engaged in the business of selling and distributing fountain pens in commerce between and among various States of the United States and in the District of Columbia. In addition to conducting their said business under the name of Union Fountain Pen Co., respondents also conducted, prior to October 1938, their business under the name, "Morrison Fountain Pen Co."

Respondents have caused and cause their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

PAR. 2. There are now, and have been during all the time respondents have been engaged in business, persons, firms, and corporations likewise engaged in the sale and distribution of fountain pens in commerce between and among the several States of the United States and in the District of Columbia, with whom the respondents are and have been in substantial competition. Among such competitors are many who are unwilling to employ the methods used by the respondents, as hereinafter set forth, or any similar methods involving the use of misleading and deceptive representations in the sale of their respective products, and who do not place in the hands of others the means of deceiving the public in regard to their respective products.

PAR. 3. In the course and conduct of their business, as hereinabove set out, respondents offer for sale and sell their "Morrison's No. 90 'Tourist' Pen" to wholesalers at 33 $\frac{1}{3}$ cents each. These wholesalers, in turn, resell such pens to the retail trade at 50 cents each and the retail merchants sell these pens to ultimate purchasers at prices ranging from 89 cents to \$1 each. These fountain pens, when sold by the respondents and when delivered to the retailers

for resale to the purchasing public, have a price mark or band affixed to each pen bearing the following statement:

\$3.75—Morrison's No. 90.

1/20—18 K. Band "The Tourist."

Through said price mark or band, the respondents represent to the purchasing public that the regular retail price of said pens is \$3.75 each.

Respondents in their advertising used in connection with the sale of said "Tourist" pens represent that the pens are "custom-built."

Each of said pens, when sold by the respondents and when delivered to ultimate purchasers, is wrapped in a "certificate" bearing the caption "Guaranteed Lifetime Service."

PAR. 4. The purported retail price of \$3.75 placed on the price marks or bands attached to said "Tourist" pens by the respondents is a greatly exaggerated and fictitious price and is much in excess of the price at which respondents intend that said pens are to be sold, and in nowise represents either the regular retail price or value of said pens, which ranges as above found from 89 cents to \$1. The use of this exaggerated and fictitious price mark or band leads the purchasing public to believe that \$3.75 is the regular retail price of said "Tourist" pens, and that said pens are of the grade and quality of pens which ordinarily or regularly retail for \$3.75. In truth and in fact, the regular retail price of said pens so price marked by the respondents is from 89 cents to \$1 each.

Respondents, by affixing said price mark or band to their said fountain pens, place in the hands of retail dealers the means by which the purchasing public is misled and deceived as to the true retail price and the true value of said "Tourist" pens.

The term "custom-built," when used in connection with fountain pens, is understood by the purchasing public to mean that said pens are "hand-made." Through the use of the term "custom-built" in designating and describing said pens in their advertising matter, respondents lead members of the purchasing public to believe that said pens are hand-made, when in truth and in fact the component parts of said pens are purchased from a number of different manufacturers and are assembled by the respondents into a finished pen. Neither the pen as a whole nor any of the component parts thereof are hand-made, and said pens are not "custom-built" as that term is understood by the purchasing public.

The use by the respondents of the "Guaranteed Lifetime Service" certificate in connection with the sale of said "Tourist" pens leads the purchasing public to believe that the pen is of a grade and quality that will last for the lifetime of the purchaser and that any repairs

necessary will be made by the respondents without cost to the purchaser. In truth and in fact, said pens will not last a "lifetime." Expert witnesses who testified in this proceeding estimate, and the Commission finds, that, under ordinary usage, the point or nib used in said pens would last for approximately 2 years, when it would have to be replaced. Repairs and replacements are not made by the respondents without cost to the purchasers of said pens, but only upon payment of a charge covering postage and insurance. The use of said "Guaranteed Lifetime Service" certificate in connection with the fictitious price mark or band showing a price of \$3.75 for each of said pens misleads and deceives the purchasing public as to the real grade and quality of said pens and leads the public to believe that said pens are of the grade and quality of pens which ordinarily sell for, and have a retail value of, \$3.75.

PAR. 5. The use of the aforesaid acts and practices by the respondents in connection with the offering for sale, sale and distribution of said "Tourist" fountain pens has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that each of said fountain pens is in truth and in fact of the value of, and ordinarily sells for, the sum of \$3.75, and that said fountain pens are "custom-built" or "hand-made" and will last a lifetime, and that repairs and replacements will be made without any cost to the purchaser, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said fountain pens, thereby unfairly diverting trade to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury 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, the answer of respondents, testimony, and other evidence in support of the allegations of said complaint, and in opposition thereto, taken before John J. Keenan and Miles J. Furnas, examiners of the Commission there-

tofore duly designated by it, and briefs filed herein, and no request for oral argument having been made, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Union Fountain Pen Co., its officers, agents, employees, and representatives, and Pauline Joab, Isadore Sandrow, and Louis Morrison, their agents, employees, and representatives, 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 that the customary and usual retail price at which said fountain pens are sold is \$3.75, or any other sum in excess of the price at which such pens are usually and customarily sold at retail.

2. Affixing to said fountain pens price marks or bands containing purported retail prices, when the prices stated on said marks or bands are fictitious and in excess of the prices at which said pens are usually and customarily offered for sale and sold.

3. Using the term "custom-built" in designating, describing, or referring to said pens.

4. Representing, through the use of a "Guaranteed Lifetime Service" certificate, or in any other manner, that said fountain pens will last a lifetime.

5. Representing that respondents will repair said pens or replace damaged parts thereof without cost, when any charge is made for such service.

It is further ordered, That the 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.

IN THE MATTER OF

HARDWOOD CHARCOAL COMPANY, MANUFACTURERS
CHARCOAL COMPANY, TENNESSEE EASTMAN COR-
PORATION, CLIFFS-DOW CHEMICAL COMPANY, ET AL

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

• *Docket 3670. Complaint, Feb. 17, 1939.¹—Decision, Aug. 9, 1940*

Where two corporate entities which, (1) together with two other aggregations of concerns and individuals, as below set forth, produced about 65 percent of all the hardwood charcoal made in the United States, (2) were, along with said aggregations and the component concerns and individuals making up the same, in active and substantial competition with one another in sale of said product in trade and commerce among the various States and in the District of Columbia, prior to and but for the acts and practices below set forth, and which, (3) along with said other groups, etc., in various combinations, and as below described, entered into and carried out agreements to suppress and eliminate price competition among themselves in sale and distribution of said product, and which two, respectively, were—

I. Tennessee selling agency organized in 1932 to act as exclusive agent in sale and distribution of hardwood charcoal produced by its three corporate "hardwood members" in certain areas of the United States and particularly in the southern part thereof, and including the States of Arkansas, Tennessee, Mississippi, Alabama, and some parts of Louisiana, Georgia, Texas, Oklahoma, Missouri, Kentucky, and Florida, and which, as such exclusive agent and within said area, handled entire charcoal output of its members and set prices at which said product was sold throughout such area, and shipped or caused to be shipped said product to the purchasers at their respective points of location in the several States other than the States of origin of such shipments; and

II. Tennessee producing company, engaged among other things, in producing charcoal as byproduct of hardwood distillation, and in selling and distributing same to distributors and dealers at various points throughout the United States and in said District, and in shipping or causing its product to be shipped to purchasers at their respective points of location, in substantial competition with pit or kiln produced hardwood charcoal and pine charcoal for same common purposes—

- (a) Entered into and, since 1932, had, and carried out, a continuous understanding and agreement whereby said agency filled orders received by said producer from latter's customers (in cases in which producer had insufficient supply of own product so to do), and under practice by which particular member of said agency filling order (contract for which was between said producer and its purchaser-customer and with price of which particular member filling order had nothing to do), placed in bags bearing trade name of producer charcoal produced by particular member, with no indication on bags or receptacles that contents were packed for seller, contrary to

¹ Amended.