

IN THE MATTER OF

AMERICAN LEAD PENCIL COMPANY, EAGLE PENCIL COMPANY, INC., JOSEPH DIXON CRUCIBLE COMPANY, EBERHARD FABER PENCIL COMPANY, INC., WELDON ROBERTS RUBBER COMPANY, AND A. W. FABER, INC.

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

Docket 4170. Complaint, June 24, 1940—Decision, Nov. 6, 1940

Where six corporations engaged in the manufacture of rubber typewriter erasers and, for a number of years last past, in their corporate capacity and through various agents, in sale and distribution in commerce among the various States and in the District of Columbia, to purchasers in said States and District, of such erasers which, together with many other products made, sold and distributed by them, were used extensively throughout the United States by the general public and by corporations and business concerns and by the United States and States Governments and municipalities, and purchase of which by many firms, corporations, and others, including Federal and States Governments and municipalities, or agents thereof, and because of substantial quantity used, was through invitation for bids and selection, on such basis, of industry member from whom particular purchase was made, and who, for more than 5 years last past, constituted substantially all the manufacturers of such erasers and, prior to acts and practices below set forth, were in active and substantial competition with each other and with other members of the industry—

Entered into and engaged in an agreement, combination, and understanding to suppress price competition and to eliminate competition between themselves, restrain interstate trade, drive out competitors, and monopolize such trade; and in pursuance thereof and for the purpose of carrying out said combination, etc., and in the making of public bids—

(1) Agreed to and did fix and maintain prices at which said products were sold, and uniform terms and conditions governing selling thereof; and

(2) Agreed to and did submit, directly and through certain agents, uniform and identical bids on such products when requests for such bids were made;

With result that effect of such combination, understanding and agreement, and acts and practices of said corporations as above set forth, were to monopolize business of manufacturing and selling rubber typewriter erasers in them, and to unreasonably lessen, eliminate, and restrain and hamper and suppress competition in manufacture and sale of said products in interstate commerce, and to deprive purchasing and consuming public of advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said industry, and otherwise to operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce:

1316

Complaint

Held, That such acts and practices of said corporation, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to hinder and prevent price competition, and did actually hinder and prevent such competition between and among such corporations in sale of rubber typewriter erasers in commerce, and placed in themselves power to control and enhance prices, and created in them monopoly in the sale of such products in commerce, and unreasonably restrained such commerce in said products, and constituted unfair methods of competition in commerce.

Mr. Floyd O. Collins, for the Commission.

Riegelman, Strasser & Schwarz, of New York City, for American Lead Pencil Co.

Guggenheimer & Untermeyer, of New York City, for Eagle Pencil Co., Inc.

Wall, Haight, Carey & Hartpence, of Jersey City, N. J., for Joseph Dixon Crucible Co.

Edwards & Smith, of New York City, for Eberhard Faber Pencil Co., Inc.

Bilder, Bilder & Kaufman, of Newark, N. J., for A. W. Faber, Inc.

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 corporations hereinafter named and described and referred to as respondents, have violated the provisions of the 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 American Lead Pencil Co. is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business at 500 Willow Avenue, Hoboken, N. J.

Respondent Eagle Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 705-45 East Thirteenth Street, New York, N. Y.

Respondent Joseph Dixon Crucible Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Wayne and Monmouth Street, Jersey City, N. J.

Respondent Eberhard Faber Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State

Complaint

31 F. T. C.

of New York, with its home office and principal place of business at 37-49 Greenpoint Avenue, Brooklyn, N. Y.

Respondent Weldon Roberts Rubber Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 351-65 Sixth Avenue, Newark, N. J.

Respondent A. W. Faber, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its home office and principal place of business located at 41 Dickerson Street, Newark, N. J.

PAR. 2. All of the respondents herein named have been for the past several years engaged in manufacturing rubber erasers, and all of said respondents, both in their corporate capacity and through various agents, have been for more than 5 years last past engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of rubber erasers, and cause said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

Among the various agents representing the respondent Eberhard Faber Pencil Co., Inc., is Charles G. Stott & Co., Inc., a District of Columbia corporation with its office located at 1310 New York Avenue NW., Washington, D. C.

Among the various agents representing the respondent A. W. Faber, Inc., are Reliance Pencil Corporation, a New York corporation with its home office located at 2224 South Sixth Avenue, Mount Vernon, N. Y., Edmond H. Weil, N. Krauskopf, and Leonard S. Schloss, copartners trading as J. H. Weil & Co., with an office and place of business located at 1315-1329 Cherry Street, Philadelphia, Pa., and Walter A. Kohn and Charles W. Speidel, copartners trading as Charles W. Speidel & Co., with offices located at 112 North Twelfth Street, Philadelphia, Pa.

Among the numerous agents representing respondent Weldon Roberts Rubber Co. is Rufus P. Clarke, trading as R. P. Clarke Co., with his place of business located at 1509 Rhode Island Avenue NW., Washington, D. C.

PAR. 3. The said respondents now constitute, and have during all of the times herein mentioned constituted, substantially all of the manufacturers of rubber erasers. Prior to the adoption of the practices herein alleged, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for the facts herein alleged, said respondents would now be in

active, substantial competition with each other and with other members of the industry.

Rubber erasers, together with many of the other products manufactured, sold, and distributed by the respondents, are used extensively throughout the United States by the general public and by corporations, firms, and partnerships, and by the United States and State Governments and municipalities. Many firms and corporations, and others, including the United States and State Governments and municipalities, or some agency thereof, because of the substantial quantity used, purchase rubber erasers through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given time or in a stated quantity.

PAR. 4. Some time prior to November 10, 1935, the respondents herein, for the purpose of suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition, and monopolizing trade in rubber erasers, entered into and engaged in a wrongful agreement, combination, and understanding to suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors, and monopolize said trade, and pursuant to and for the purpose of carrying out said combination, understanding and agreement have done, among other things, the following:

(a) Agreed to fix and maintain and have fixed and maintained the prices at which said product is sold.

(b) Agreed to fix and maintain and have fixed and maintained uniform terms and conditions governing the sale of said product.

(c) Agreed to submit and have submitted, directly and through the agents named in paragraph 2 hereof, uniform and identical bids on said product when requests were made for such bids.

PAR. 5. The capacity, tendency, and effect of such combination, understanding, and agreement, and the acts and practices of respondents as set out herein and many others not specifically named, are and have been to monopolize for said respondents the business of manufacturing and selling rubber erasers and to unreasonably lessen, eliminate, and restrain, baffle, hamper, and suppress competition in the manufacture and sale of said product in interstate commerce and to deprive the purchasing and consuming public of the advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of

Findings

31 F. T. C.

trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 6. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of rubber erasers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in the manufacture and sale of rubber erasers, 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 June 24, 1940, issued, and on June 25, 1940, served its complaint in this proceeding upon respondents, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, Inc., a corporation, 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, the respondents, Eagle Pencil Co., Inc., and the American Lead Pencil Co., filed answers denying the allegations of the complaint. Thereafter, the Commission, by order entered herein, granted motions of the respondents, Eagle Pencil Co., Inc., and the American Lead Pencil Co. for permission to withdraw said answers, and thereafter, all of the respondents filed answers admitting all the material allegations of facts of and concerning the acts and practices of respondents in making public bids on rubber typewriter erasers for the period between November 10, 1935, and April 10, 1938, as set forth in said complaint, and waived all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said answers, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this procedure 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, American Lead Pencil Co., is a corporation organized and existing under and by virtue of the laws of the

1316

Findings

State of New York, with its home office and principal place of business located at 500 Willow Avenue, Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 705-45 East Thirteenth Street, New York, N. Y.

Respondent, Joseph Dixon Crucible Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Wayne and Monmouth Streets, Jersey City, N. J.

Respondent, Eberhard Faber Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 37-49 Greenpoint Avenue, Brooklyn, N. Y.

Respondent, Weldon Roberts Rubber Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 351-65 Sixth Avenue, Newark, N. J.

Respondent, A. W. Faber, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 41 Dickerson Street, Newark, N. J.

PAR. 2. Each of the respondents has been for a number of years last past engaged in the manufacture of rubber typewriter erasers, and has been, for more than 5 years last past, both in its corporate capacity and through various agents, engaged in the sale and distribution, in commerce, among and between the various States of the United States and the District of Columbia, of rubber typewriter erasers, and caused said product, when sold, to be shipped from the respective places of business of said respondents, through and into other States of the United States and into the District of Columbia, to the purchasers thereof.

Among the various agents representing the respondent, Eberhard Faber Pencil Co., Inc., is Charles G. Stott & Co., Inc., a District of Columbia corporation, located at 1310 New York Avenue NW., Washington, D. C.

Among the various agents representing the respondent, A. W. Faber, Inc., are Reliance Pencil Co., a New York corporation, located at 2224 South Sixth Avenue, Mount Vernon, N. Y.; Edmond H. Weil, N. Krauskopf, and Leonard S. Schloss, copartners, trading as J. H. Weil & Co., located at 1315-1329 Cherry Street, Philadelphia, Pa.; and Walter A. Kohn and Charles W. Speidel, copartners trading as

Findings

31 F. T. C.

Charles W. Speidel & Co., located at 112 North Twelfth Street, Philadelphia, Pa.

Among the numerous agents representing respondent, Weldon Roberts Rubber Co., is Rufus P. Clarke, trading as R. P. Clarke Rubber Co., located at 1509 Rhode Island Avenue NW., Washington, D. C.

PAR. 3. Respondents constitute, and have for more than 5 years last past constituted substantially all of the manufacturers of rubber typewriter erasers. Prior to the adoption of the practices herein found to exist, said respondents were in active and substantial competition with each other and with other members of said industry.

Rubber typewriter erasers, together with many of the other products manufactured, sold, and distributed by the respondents are used extensively throughout the United States by the general public and by corporations, firms and partnerships, and by the United States and State Governments and municipalities. Many firms and corporations and others, including the United States and State Governments and municipalities, or agents thereof, because of the substantial quantity used, purchase rubber typewriter erasers through invitations for bids, from which bids are selected the member of the industry from whom purchasers of said product are made for a given time, or in a stated quantity.

PAR. 4. Prior to November 10, 1935, the respondents, for the purpose of suppressing price competition, restraining interstate trade, eliminating competition between themselves, and monopolizing the trade in rubber typewriter erasers, entered into and engaged in an agreement, combination and understanding to suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade, and from November 10, 1935, to April 10, 1938, carried out said understanding and agreement, and pursuant to, and for the purpose of carrying out said combination, understanding and agreement, and in making public bids, did, among other things, the following:

(a) Agreed to fix and maintain, and fixed and maintained the prices at which said product was sold.

(b) Agreed to fix and maintain, and fixed and maintained uniform terms and conditions governing the sale of said product.

(c) Agreed to submit and submitted, directly and through the agents named in paragraph 2 hereof, uniform and identical bids on said product, when requests were made for such bids.

PAR. 5. The capacity, tendency, and effect of such combination, understanding, and agreement, and the acts and practices of the respondents, as herein found, are and have been to monopolize the business of manufacturing and selling rubber typewriter erasers in said

1316

Order

respondents, and to unreasonably lessen, eliminate, and restrain and hamper and suppress competition in the manufacture and sale of said products in interstate commerce, and to deprive the purchasing and consuming public of the advantages of price, service and other considerations, which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public, have a dangerous tendency to hinder and prevent price competition, and have actually hindered and prevented price competition between and among respondents in the sale of rubber typewriter erasers in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in respondents a monopoly in the sale of rubber typewriter erasers in such commerce; and unreasonably restrained such commerce in rubber typewriter erasers 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 answers of the respondents, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, Inc., a corporation, in which answers respondents admit all the material allegations of fact set forth in said complaint concerning respondents' acts and practices in making public bids on rubber typewriter erasers for the period between November 10, 1935, and April 10, 1938, 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

Order

31 F. T. C.

It is ordered, That the respondents, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, Inc., a corporation, their respective officers, agents, servants and employees, or any of them, do forthwith cease and desist from entering into, continuing, carrying out or attempting to continue or carry out, by any method or means, any contracts, agreement or understanding, either written or verbal, the purpose or effect of which is to fix and maintain uniform prices at which rubber typewriter erasers are to be sold, or to fix the terms and conditions governing the sale of rubber typewriter erasers in commerce as commerce is defined in the Federal Trade Commission Act.

It is further ordered, That the respondents shall each, 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.

Syllabus

IN THE MATTER OF
JOSEPH HAGN COMPANY

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

Docket 3997. Complaint, Jan. 23, 1940—Decision, Nov. 12, 1940

Where a corporation engaged in sale and distribution of clocks, pocket knives, jewelry, wearing apparel, and various other articles of merchandise, including certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when sold and distributed to the consumers thereof, and which included, as illustrative,—

(1) Clock, together with punchboard for use in sale and distribution of said clock under a plan, and in accordance with board's explanatory legend, by which particular purchaser securing, for 5 cents paid, certain one of various numbers concealed within such board, became entitled to and received said article of merchandise, and those who did not qualify by obtaining such particular number received nothing for their money;

(2) Number of pocket knives, together with a push card for use in sale and distribution of said articles under a plan, in accordance with which particular number secured under disc pertaining to name selected from list of girls' names set forth on card, determined amount paid by purchaser for one of said knives, retail value of each of which was greater than some of the amounts thus to be paid therefor, and which, as aforesaid indicated, were determined wholly by lot or chance; and

(3) Articles of merchandise, separately containered, and enclosed within a large cardboard carton so constructed that one end thereof constituted a pull card for use in sale and distribution of said articles of merchandise thus containered, under a plan by which purchaser received, for 10 cents paid, particular item of merchandise, as determined by correspondence of particular number secured by chance from pull card with number displayed on each of individual cartons of aforesaid articles of merchandise, many of which were worth more than amounts thus to be paid, and distribution of which to purchasing public was thus determined wholly by lot or chance;

Sold and distributed its said assortments, together with punchboards, push or pull cards and other devices furnished by it, to dealers by whom same were used in selling and distributing such merchandise in accordance with aforesaid sales plans or methods involving game of chance or sale of a chance to procure an article of merchandise at price much less than the normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of its merchandise in accordance with sales plans or methods above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are