

Complaint

IN THE MATTER OF

BERTRAM A. STRAUSS, TRADING AS COLUMBIA PENCIL
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4083. Complaint, Apr. 4, 1940—Decision, July 11, 1941

Where an individual engaged in competitive interstate sale and distribution of pencils; by circulars, letterheads, and other advertising material—

- (a) Represented, prior to stipulation entered into with Commission to cease and desist such representations, that he made and manufactured his said products and owned and operated or directly and absolutely controlled the plant or factory in which same were manufactured, through such statements as “* * * direct from the factory at a saving of 33⅓%,” etc., when in fact he did not manufacture the pencils he sold; and
- (b) Represented his concern as “Manufacturers of Pencils for all Purposes,” through statements to that effect, facts being that, while he was a manufacturer of the mechanical pencils which he offered and sold, he was not a manufacturer of the other types thus dealt in, purchasing his supplies of crayon pencils from others, and buying lead pencils from manufacturer thereof in completed form except for painting and adding of ferrule and eraser which he proceeded to do:

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public, who have a marked preference for dealing directly with manufacturers, by reason of their belief that thereby lower prices and other advantages may be obtained, into the erroneous belief that said representations were true, and into purchase of a substantial quantity of said products, whereby trade was unfairly diverted to said individual from his competitors, among whom there are many who manufacture their products and others who do not manufacture same or represent themselves as manufacturers; to the substantial injury of competition in commerce:

Held, That such acts and practices, as above 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 W. Addison* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Mr. Joseph Strauss, of New York City, 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 Bertram A. Strauss,

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individually and trading as Columbia Pencil Co., hereinafter referred to as 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. Bertram A. Strauss is an individual trading and doing business as Columbia Pencil Co., with his office and principal place of business at 29 West Seventeenth Street, New York, State of New York.

Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of pencils, including ordinary lead pencils and mechanical or automatic pencils. Respondent causes his products when sold by him, to be transported from his aforesaid place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, the respondent has been and is in substantial competition with other individuals and with firms and corporations also engaged in the sale and distribution of pencils in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who manufacture their products and others who do not manufacture their products but who do not represent themselves to be manufacturers.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his said products, respondent has made false and misleading representations that he is a manufacturer and that his said products are manufactured by him, such representations being made by means of circulars, letterheads, billheads, and other advertising material distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

FAMOUS
COLUMBIA PENCILS

Direct from the factory at a saving of 33⅓%.

Here is our story. We are selling thousands of business concerns throughout the country, and we want you to become one of our customers. .

It is our notion that a straight line is the shortest, quickest, and most economical route from the factory to the ultimate consumer. Every time a product

makes a detour at a distributor, a special factory representative or dealer, the COST GOES UP—and you pay it. Therefore, we have taken the middlemen by the seats of their trousers and tossed them out. We hope you don't mind.

Columbia Pencil Company, Manufacturers of Pencils for All Purposes.

In truth and in fact, respondent is not a manufacturer and does not manufacture any of his said pencils. With the exception of his mechanical or automatic pencils, respondent purchases all of his pencils outright from manufacturers or from wholesalers and jobbers. As to such mechanical or automatic pencils, respondent purchases the parts from other parties and merely assembled such parts at his place of business.

PAR. 4. There is a marked preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 5. The use by the respondent of the foregoing false and misleading representations has the tendency and capacity to and does mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of a substantial quantity of respondent's products. As a result, trade is diverted unfairly to respondent from his competitors, and in consequence substantial injury has been done, and is being done by respondent, to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. 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, the Federal Trade Commission on April 4, 1940, issued and subsequently served its complaint in this proceeding upon respondent Bertram A. Strauss, an individual, trading as Columbia Pencil Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission

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and in opposition thereto by the attorney for the respondent before 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; report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and 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 Bertram A. Strauss is an individual doing business under the name and style of Columbia Pencil Co., with his principal place of business at 29 West Seventeenth Street, New York, N. Y. Respondent for a number of years last past has been engaged in the sale and distribution of pencils.

PAR. 2. In the course and conduct of his business respondent has transported or caused to be transported from his place of business in the State of New York pencils of various types sold by him to purchasers thereof located in other States of the United States and in the District of Columbia, and has maintained a constant course of trade in such pencils in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of his said products respondent has, by means of circulars, letterheads, and other advertising material distributed among prospective purchasers, made various representations in connection with the sale of such pencils. Respondent commenced his present business in 1931 and in 1936 and prior thereto made representations such as:

FAMOUS

COLUMBIA PENCILS

direct from the factory at a saving of 33⅓%

Here is our story: We are selling thousands of business concerns throughout the country, and we want you to become one of our customers.

It is our notion that a straight line is the shortest, quickest, and most economical route from the factory to the ultimate consumer. Every time a product makes a detour at a distributor, a special factory representative or dealer, the COST GOES UP—and YOU pay it. Therefore, we have taken the middlemen by the seats of their trousers and tossed them out. We hope you don't mind!

At the time such representations were being made respondent did not manufacture the pencils offered for sale and sold by him. By stipulation to cease and desist entered into with the Federal Trade Commission and approved on August 3, 1936, respondent agreed to cease and desist from the use of representations such as those set out above or of any other statements of similar meaning "so as to import or imply that the said Bertram A. Strauss makes or manufactures said products or that he actually owns and operates or directly and absolutely controls the plant or factory wherein said products are made or manufactured."

In 1939 respondent, by the aforesaid means, made and circulated representations such as:

COLUMBIA PENCIL CO.

Manufacturers of Pencils for all Purposes

PAR. 4. At the time respondent represented himself to be a manufacturer of pencils for all purposes he was engaged in offering for sale and selling crayon pencils, lead pencils, and mechanical pencils. Respondent did not, and does not now, manufacture the crayon pencils sold by him but purchases his supplies of such products from others. The lead pencils offered for sale and sold by respondent are purchased by him from a manufacturer thereof in completed form except that they are unpainted and have no ferrule and eraser. Respondent proceeds to paint or lacquer the pencils so purchased and add ferrules and rubber erasers thereto.

With respect to mechanical pencils sold and offered for sale by respondent, respondent purchases plastic tubing in pieces several feet in length which his employees cut into appropriate lengths and subject to various drawing and forming processes by which pencil barrels and caps for mechanical pencils are produced. The ferrules and clips for such pencils are made by respondent's employees from brass strips and then attached to and made a part of the barrel and cap produced as stated above. To complete the pencil a mechanical action for holding the necessary lead is purchased from others and inserted in the barrel. A connecting link is provided between the cap and barrel and an eraser and leads are supplied. This is substantially the process followed by other manufacturers of mechanical pencils.

In the circumstances stated the Commission finds that the respondent is a manufacturer of mechanical pencils offered for sale and sold by him but is not a manufacturer of the other types of pencils which he offers for sale and sells.

PAR. 5. Respondent has been, and is, in substantial competition with other individuals and with firms and corporations also engaged

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in the sale and distribution of pencils in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who manufacture their products and others who do not manufacture their products but who do not represent themselves to be manufacturers.

PAR. 6. There is a marked preference on the part of dealers and the purchasing public for dealing directly with the manufacturer of products purchased, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 7. The use by respondent of the false and misleading representations as aforesaid has the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of a substantial quantity of respondent's products. As a result trade is unfairly diverted to respondent from his competitors and in consequence substantial injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent 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, the answer of respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Bertram A. Strauss, individually, and trading as Columbia Pencil Co., or trading under any other name, his representatives, agents, and employees, directly or through

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any corporate or other device, in connection with the offering for sale, sale and distribution of pencils of any type in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly, by the use of the words or terms "manufacturer," "direct from the factory," or any other words or terms of similar import or meaning, that respondent is the manufacturer of any such product which is not in fact manufactured in a plant owned and operated or directly and absolutely controlled by him.

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

IN THE MATTER OF

REX DRUG COMPANY, AND LOUIS PODROFSKI, INDIVIDUALLY AND TRADING AS REX DRUG COMPANY, AND AS AN OFFICER THEREOF

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

Docket 4342. Complaint, Oct. 10, 1940—Decision, July 11, 1941

Where a corporation and an individual, who was president and treasurer thereof and directed and controlled its policies and practices, engaged in interstate sale and distribution of various medicinal preparations, including one designated "Rex Perio Pills," for treatment of delayed menstruation; by means of advertisements disseminated through the mails, in periodicals, and by circulars, leaflets, pamphlets, and other advertising literature; in cooperation with one another—

- (a) Represented, directly or by implication, that their said preparation constituted a competent and effective treatment for delayed, scanty, and painful menstruation, and that it was safe and harmless;

The facts being it was not a competent or effective treatment for said condition, and was not safe or harmless, in that it contained certain drugs, use whereof under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and, where used to interfere with pregnancy, might result in uterine infection and blood poisoning or other serious and irreparable injury to health; and

- (b) Failed to reveal facts material in the light of such representations, and that the use of said preparation under prescribed or usual conditions might result in said serious and irreparable injury;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that their said preparation possessed properties which it did not in fact possess, and that it was safe and harmless, when such was not the fact, and with result, that, because of such belief, said public purchased substantial quantities of their preparation:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., 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 Rex Drug Co., a