

IN THE MATTER OF
W. A. SHEAFFER PEN COMPANY

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

Docket 4337. Complaint, Oct. 9, 1940—Decision, May 3, 1945

- Where a corporation engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, including its "Lifetime" fountain pen which it began to sell under a guarantee for the life of the purchaser in 1925, with no charge for service and repair other than for transportation, but for which, following the adoption by leading fountain pen manufacturers of a code under the National Industrial Recovery Act in 1933, it began to make a flat service charge of 35¢ or 25¢ if the pen was delivered in person at its main or branch offices;
- Making use of a "guarantee" form providing that it "guarantees for the life of the first user, the LIFETIME pen except against loss, theft and wilful damage, and no charge will be made for repairing so as to put it in good writing condition, except a service and handling charge of 35¢, provided the complete pen, including any broken parts, is sent to our factory or authorized service station accompanied by this guarantee coupon," etc.—
- Represented, directly or by implication, through the use of the word "Lifetime" as a trade name for its pens, and statements such as "Lifetime Guaranteed," "Guaranteed for Life," etc. in large and extensive advertisements in periodicals of nationwide circulation and in newspapers published in the principal cities throughout the country in which the trade name "Lifetime" was featured, with no reference in the principal portions of the advertisements to the fact that a service charge was made for servicing and repairing the pen—that its pens were unconditionally guaranteed for the life of the user, that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it would be repaired or replaced without charge; and failed to avoid the misleading effects of said representations by the insertion, at or near the bottom of the advertisements and in small type, of a contradictory statement to the effect that such unconditional guarantee was "subject only to insurance, postage, handling charge—35¢";
- The facts being that in view of the service charge imposed by it its pens could not properly be represented as guaranteed for life or for any other period of time; the purported guarantee was merely a contract whereby it agreed that during the life of the user it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen was returned to it for such service, and the most that could be said of the agreement was that it was a guarantee of repair service on the pen;
- With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its pens were unconditionally guaranteed for the life of the user, and to cause such public to purchase substantial quantities of its pens as a result, whereby substantial trade was diverted unfairly to it from its competitors, among whom were those who did not engage in such acts and practices:
- Held*, That said acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

As respects the question of the misleading effect of advertisements by a seller of fountain pens in which in its so-called guarantee of the pen for the life of the user, it undertook to make no charge for repair "except a service and handling charge of 35¢," and which, in periodicals of nation-wide circulation and in newspapers published in many of the principal cities throughout the country, featured tradename "Lifetime" and the statement that the pen was "Lifetime guaranteed," "Guaranteed for Life," etc.: A small type statement at or near the bottom of such advertisements, with no other reference to the fact that a service charge was made for service and repair which, preceded by an asterisk or other symbol referring to the word "Lifetime" in the body of the advertisement, read "* All Lifetime pens are unconditionally guaranteed for the life of the first user except against loss and wilful damage — when serviced, if complete pen is returned," did not avoid the misleading effect of said other representations since, ordinarily, it would escape the attention of the average reader, and even were it displayed prominently, it would still be insufficient, being inconsistent with and contradictory of the representations in the advertisement that the pen was unconditionally guaranteed for the life of the user; and the imposition of a charge for keeping the pen in usable condition was in direct conflict with its representation that the pen was unconditionally guaranteed for life.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. Karl Stecher for the Commission.

Pope, Ballard & Loos, of Washington, D. C., and *Mr. E. H. Pollard*, of Fort Madison, Ia., 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 W. A. Sheaffer Pen Company, a corporation, 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, W. A. Sheaffer Pen Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Fort Madison, Iowa. It is now, and has been for many years last past, engaged in the business of manufacturing and selling fountain pens and pencils. It causes said fountain pens and pencils, when sold, to be transported from its place of business in Fort Madison, Iowa, or from some other distributing point, to the purchasers thereof at their respective points of location in States other than the State from which said fountain pens or pencils are shipped and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens and pencils 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 partnerships and persons also engaged in the business of manufacturing fountain pens and pencils and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia,

Complaint

40 F. T. C.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens, it has designated the same "Lifetime" pens, and has caused various statements and representations, including pictorial representations, relative to said pens designated "Lifetime" pens, to be inserted in advertisements in newspapers, magazines and other publications having a general circulation throughout the various States of the United States and in the District of Columbia. Among and typical of said statements and representations relative to said fountain pens designated "Lifetime" are the following:

DEMAND THE WHITE DOT

IF IT HASN'T THIS WHITE DOT IT
ISN'T A GENUINE LIFETIME° PEN

DON'T BE FOOLED!
SHEAFFER MAKES THE ONLY LIFETIME° PEN

When you pay for a Lifetime° pen,
Be Sure You Get One! Only Sheaffer's
wear the White Dot, the mark of the
genuine Lifetime° guaranteed pen.

THERE IS ONLY ONE LIFETIME° PEN
SHEAFFER'S

THE ONLY LIFETIME° PEN IS
SHEAFFER'S
DON'T BE MISLED—IDENTIFY IT BY THIS
WHITE DOT°

THE PEN YOU WANT—YOUR NO. 1 GIFT
BECAUSE IT'S LIFETIME° GUARANTEED

Near the bottom of the advertisement, in small and inconspicuous type, appears the following:

All Lifetime° pens are unconditionally
guaranteed for the life of the owner
except against loss and willful damage—
when serviced subject only to insurance,
postage, handling charge—35¢.

The small circle "°" placed above the line of type after the word "Lifetime" appears to represent the white dot which is placed upon the cap of the pen as an identifying mark. Close inspection of the advertisement discloses that at the bottom of the page, most inconspicuously and in very minute type, appears a similar "°" followed by the phrase "Reg. U. S. Pat. Off."

The above quotations and representations are not all-inclusive, but are merely illustrative of the type and character of those used by respondent in advertising its fountain pens which it designates as "Lifetime."

PAR. 4. Through the use of the aforesaid statements and representations by respondent, and others of similar import or meaning not herein

set out, including the use of the word "Lifetime" in the designation of said fountain pens, respondent represents, directly or by implication, that:

1. Said fountain pens designated by the name "Lifetime" are of such superior quality and durability that they will last a lifetime without repair or adjustment.

2. Only respondent makes a fountain pen of such superior quality and durability that it will last a lifetime without repair or adjustment.

3. Respondent's fountain pens designated by the name "Lifetime" are guaranteed for life.

4. Respondent's fountain pens designated by the name "Lifetime" are the only fountain pens guaranteed for life.

PAR. 5. The aforesaid statements and representations so made and used by respondent are false and misleading. Said fountain pens designated by the name "Lifetime" are not of such superior quality and durability that they will last a lifetime without repair or adjustment; nor are said fountain pens of such superior quality as to warrant their being designated or described as "Lifetime."

In truth and in fact, said fountain pens designated "Lifetime" are not guaranteed for life. Whenever one of said fountain pens is sent to respondent for repair or adjustment, respondent exacts a charge of 35 cents purportedly for "insurance, postage, and handling." This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported "lifetime guarantee" is therefore in no sense a genuine lifetime guarantee, nor is it a guarantee of any sort. It is instead merely a contract whereby respondent agrees for the life of the purchaser to make necessary repairs and adjustments at the flat rate of 35 cents each time the pen is sent to it for such service.

PAR. 6. There are now, and have been, competitors of respondent manufacturing and selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the quality of the products offered for sale and sold by them, nor do they misrepresent the nature of any service offered in connection therewith, nor do they make misrepresentations of any other character or nature to induce the public to purchase the products offered for sale and sold by them.

PAR. 7. The aforesaid acts, practices and representations of the respondent herein detailed in connection with the advertising and sale of its said "Lifetime" fountain pens had, and now have, the capacity and tendency to, and did and do, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading representations and implications are true, and into the purchase of substantial quantities of respondent's fountain pens because of such erroneous and mistaken belief so induced.

As a direct result of the aforesaid false and misleading representations and implications by respondent, 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 their products or any service offered in connection therewith. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of 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 October 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, W. A. Sheaffer Pen Company, a corporation, 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 that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; 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. The respondent, W. A. Sheaffer Pen Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Fort Madison, Iowa. Respondent is now, and for many years last past has been, engaged in the manufacture and sale of fountain pens and mechanical pencils.

PAR. 2. Respondent causes and has caused its fountain pens and pencils, when sold, to be transported from its place of business in the State of Iowa or from some other distributing point to the purchasers thereof at their respective locations in various States of the United States other than the State from which such products are shipped, and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now and has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of fountain pens and mechanical pencils in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent began the manufacture of fountain pens in 1912. In 1918 it developed a gold point for its pens which was regarded as possessing unusual sturdiness and durability, and some two years later the name "Lifetime" was adopted as a trade name for the line of pens which carried this particular point. Subsequently, application was made by respondent to the United States Patent Office for the registration of the name, and in 1923 the name was registered by that Office as a trade name

or trade-mark belonging to respondent. Respondent states that its reason for adopting that trade name was that the name suggested durability and long life.

At about the time of the registration of the name by the Patent Office, respondent adopted the policy of guaranteeing the gold point of the pen for the life of the purchaser. Subsequently, in 1925, respondent developed and adopted a pyroxylin plastic barrel or holder for the pen which was regarded as possessing much greater durability than the old type of barrel, which had been made of hard rubber. Thereupon, the "Lifetime Guarantee" was extended by respondent to cover the entire pen rather than the point only.

Originally no charge (other than transportation charges) was made by respondent for servicing and repairing the pen. In 1933, however, under a code adopted by the leading fountain pen manufacturers under the National Industrial Recovery Act, respondent began to make a service charge of thirty-five cents each time the pen was sent in for servicing, which practice has continued to the present time. (The charge is only twenty-five cents if the pen is delivered in person at respondent's main office in Fort Madison, Iowa, or at one of its branch offices, which are located in New York City, Chicago, Ill., and San Francisco, Calif.) The service charge is the same, regardless of whether the repairs to the pen are of a serious or minor nature.

Except for the provision as to the service charge, the terms of the "guarantee" used by respondent have remained substantially the same since the adoption of the policy in 1925. The form presently used reads as follows:

SHEAFFER'S *Lifetime* PEN GUARANTEE

The W. A. Sheaffer Pen Company hereby guarantees for the life of the first user, the LIFETIME pen except against loss, theft and wilful damage, and no charge will be made for repairing so as to put it in good writing condition, except a service and handling charge of 35¢, provided the complete pen, including any broken parts, is sent to our factory or authorized service station accompanied by this guarantee coupon signed by an authorized Sheaffer distributor. Charge will be made for any missing parts, but not for the repair or replacement of any defective or broken parts.

If it is necessary to return your pen to the factory for repair, make sure all broken parts are included and enclose 35¢ to cover return postage, insurance against loss in transit, and handling, with your instructions and this guarantee coupon. Prompt service will be given and this guarantee coupon will be returned to you. In order for a SHEAFFER guarantee to be valid, the pen must be purchased from and guarantee signed by an authorized SHEAFFER dealer.

Effective from this day.....forward. This certifies the undersigned is an authorized SHEAFFER Dealer.

Signature.

W. A. SHEAFFER PEN COMPANY
Fort Madison, Iowa, U.S.A.

C. R. Sheaffer President

PAR. 5. For many years respondent has advertised its "Lifetime" pen extensively throughout the United States, large advertisements being

inserted in periodicals having nation-wide circulation and in newspapers published in many of the principal cities throughout the country. These advertisements feature the trade name "Lifetime," and many of them also state, frequently in heavy and conspicuous type, that the pen is "Lifetime Guaranteed," "Guaranteed for Life," etc. No reference is made in the principal portions of the advertisements to the fact that a service charge is made for servicing and repairing the pen. At or near the bottom of the advertisements, however, there usually appears, in small type, a statement reading substantially as follows:

* All Lifetime pens are unconditionally guaranteed for the life of the first user except against loss and wilful damage—when serviced, if complete pen is returned, subject only to insurance, postage, handling charge—35¢.

The asterisk preceding this statement refers to the word "Lifetime" in the body of the advertisement which is followed by an asterisk. Formerly, instead of asterisks, small circles or dots were used in order to emphasize the identifying mark of the "Lifetime" pen, which is a small white dot on the barrel or cap of the pen.

PAR. 6. The Commission finds that through the use of the word "Lifetime" as a trade name for its pens, and of statements such as "Lifetime Guaranteed" and "Guaranteed for Life" in connection with such pens, respondent represents, directly or by implication, that its pens are unconditionally guaranteed for the life of the user—that is, that if for any reason other than wilful damage or abuse the pen should fail to give satisfactory service for such period of time, it will be repaired or replaced by respondent without charge.

PAR. 7. Respondent concedes that a substantial portion of the pens do not last for the lifetime of the user without repair or adjustment, and the record affirmatively shows that every year many thousands of the pens are returned to respondent for necessary servicing, repair, or replacement of some part of the pen. The following table shows the number of pens returned to respondent for such purposes during each of the years 1935 to 1941, inclusive, as well as the net cost to respondent of servicing and repairing the pens over and above the amount received through the service charge:

<i>Year</i>	<i>Number of Pens Serviced</i>	<i>Net Cost to Respondent</i>
1935	355,600	\$49,685.39
1936	373,253	\$49,012.92
1937	398,389	\$62,077.41
1938	413,482	\$66,862.34
1939	390,813	\$67,475.13
1940	404,217	\$69,053.37
1941	428,712	\$82,105.15

PAR. 8. In view of the service charge imposed by respondent, its pens cannot properly be represented as guaranteed for life or for any other period of time. The purported guarantee is not in fact a guarantee of the pen but is merely a contract whereby respondent agrees that during the life of the user it will make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen is returned to respondent for such service. The most that can be said of the agreement

is that it is a guarantee of repair service on the pen. It is in no sense a guarantee of the pen itself.

PAR. 9. The Commission therefore finds that the representations made by respondent with respect to its pens, as set forth in paragraphs 5 and 6 hereof, are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement (set out in paragraph 5 above) with respect to the service charge. As heretofore pointed out, this statement appears in small type and occupies an inconspicuous position in the advertisement. Ordinarily, it would escape the attention of the average reader. Even were it displayed prominently, however, the statement would still be insufficient, because it is inconsistent with and contradictory of the representations in the advertisement that the pen is unconditionally guaranteed for the life of the user. The imposition of a charge for keeping the pen in usable condition is in direct conflict with respondent's representation that the pen is unconditionally guaranteed for life.

PAR. 10. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's pens are unconditionally guaranteed for the life of the user, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's pens as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors among whom are those who do not engage in the acts and practices herein described.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice 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 taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. A. Sheaffer Pen Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Lifetime," "Lifetime Guaranteed," "Guaranteed for Life," or any word or words of similar import, alone or in con-

junction with any other word or words, to designate, describe, or refer to respondent's pens, or otherwise representing, directly or by implication, that such pens are unconditionally guaranteed for life, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during the life of the user by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's pens are unconditionally guaranteed for any designated period of time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated during such designated period by any cause other than wilful damage or abuse.

Nothing contained in this order, however, shall be construed as prohibiting respondent from representing truthfully that the service on its pens (as distinguished from the pens themselves) is guaranteed for life or other designated period of time, even though a charge is imposed by respondent in connection with such servicing, provided the terms of such guarantee, including the amount of such charge, are clearly and conspicuously disclosed in immediate conjunction with such representation.

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.

Syllabus

IN THE MATTER OF
THE PARKER PEN COMPANY

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

Docket 4333. Complaint, Oct. 9, 1940—Decision, May 3, 1945

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, including its "Vacumatic" and "Blue Diamond" line which it sold under a "GUARANTEE" setting forth that the models there specified "are GUARANTEED FOR LIFE of the owner except against loss and wilful damage," and that "Any Parker Major or Maxima Vacumatic pen (not wilfully abused) when returned to us COMPLETE with all damaged parts will be serviced, repaired, or replaced FREE. . . . subject only to insurance, postage, and handling charges of 35¢," etc., and later under a "LIFE CONTRACT GUARANTEE" stating that "Parker's Blue Diamond on the pen clip is our life contract with the owner, guaranteeing to make good any damage to the pen (except loss or willful abuse) subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service"—

(a) Represented, directly or by implication, through featuring such statements "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," in extensive advertisements of its pens in periodicals and newspapers of wide circulation in which no reference was made in the principal portions to said service charge that its pens were unconditionally guaranteed for the life of the owner; and failed to avoid the misleading effects of said representations by a small type statement at the bottom of the advertisement to the effect that its said guarantee was "subject only to a charge of 35¢ for postage, insurance, and handling, provided complete pen is returned for service";

The facts being that in view of the service charge imposed by it, its pens could not properly be represented as guaranteed for life or for any other period of time; the purported guarantee was merely a contract whereby it agreed that during the life of the owner it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each, and the most that could be said of the agreement was that it was a guarantee of repair service on the pen; and

(b) Erroneously and misleadingly represented in its advertisements that its pens contained fourteen less parts than other self-filling fountain pens, and that the points on the pens were "Scratch-proof";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause such public to purchase substantial quantities of its pens as a result, whereby substantial trade diverted unfairly to it from its competitors:

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

As respects the question of the misleading effect of advertisements by a seller of its "Vacumatic" and "Blue Diamond" line of pens, which featured such statements as "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guarantee," in extensive advertisements of its pens in periodicals and newspapers of wide circulation, and made no reference in the principal portions