

IN THE MATTER OF
EVERSHARP, INC.

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

Docket 4590. Complaint, Sept. 15, 1941—Decision, May 3, 1945

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of fountain pens and mechanical pencils, making use of a guarantee certificate which, prior to institution of instant proceeding, read "GUARANTEED FOREVER The Eversharp Gold Seal Doric Pen is GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*. No charge will be made for repairs except a slight service charge of thirty-five cents (35¢) to cover handling, postage and insurance," etc.—

Represented, directly or by implication, in advertisements in newspapers, magazines, etc. and through point-of-sale advertising supplied to retailers including display posters, cards, etc., and particularly through radio broadcasts conveying programs to listeners in many states, in which pens and pencils were represented as "guaranteed forever" and customarily as "guaranteed not for years—not for life—but GUARANTEED FOREVER," that such pens and pencils were unconditionally guaranteed forever or without limitation as to time, that is, that if at any time and for any reason other than wilful damage or abuse the pen or pencil should fail to give satisfactory service, it would be repaired or replaced by it without charge; and failed to avoid or correct such misleading representations through the disclosure in its more recent advertisements that a service charge must be paid, and which, furthermore, in some of its radio broadcasts, employed chiefly for its advertising and usually lasting thirty minutes, was not made in connection with each mention of the guarantee but was deferred until near the close of the program;

The facts being that in view of the service charge imposed by it its products could not properly be represented as guaranteed forever or for any other period of time; the purported guarantee was in fact merely a contract whereby it agreed that it would at any time make necessary repairs and adjustments to the pen or pencil at the flat rate of thirty-five cents each time the pen or pencil 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;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its pens and pencils were unconditionally guaranteed forever and, as a result, to cause its purchase of substantial quantities thereof;

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

As respects the question of the misleading effect of advertisements by a seller of fountain pens and pencils which in its guarantee certificate entitled, "GUARANTEED FOREVER," set forth that the product was "GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*," and "No charge will be made for repairs except a slight service charge of thirty-five cent,

(35¢) to cover handling, postage and insurance," and which originally advertised the same as "Guaranteed Forever" or by other words of similar import: Disclosure later in its various advertisements, including broadcasts, that a service charge must be paid, did not avoid said misleading effect, being inconsistent with and contradictory of the representations in the advertisement that the pen or pencil was unconditionally guaranteed forever; and the imposition of a charge for keeping the pen or pencil in usable condition was in direct conflict with its representation that the products were unconditionally guaranteed.

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

Mr. Karl Stecher for the Commission.

Hayes & Sher and *Mr. Robert Jackson*, of Washington, D. C., and *Winston, Strawn & Shaw*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Eversharp, Inc., 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, Eversharp, Inc., 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 Chicago, Ill. It is now, and has been for more than one year 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 manufacture in Chicago, Ill., 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. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of certain of its fountain pens and pencils, respondent has caused various statements and representations relative to the quality and durability of said pens and pencils 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, and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate. Among and typical of said statements and representations relative to said fountain pens and pencils are the following:

EVERSHARP Skyline Pens and Repeater Pencils, identified by the double check mark on the clips are guaranteed forever. A 35-cent charge is made for postage, insurance and handling. But against everything—except loss or intentional damage—we GUARANTEE FOREVER!

EVERSHARP REPEATING PENCILS are guaranteed not for years, not for life, but GUARANTEED FOREVER!

This sensational—BEAUTIFUL new EVERSHARP Doric pen—is guaranteed—not for years—not for life—but GUARANTEED FOREVER.

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 and pencils which it allegedly guarantees forever.

PAR. 3. Through the use of the aforesaid statements and representations by respondent relative to its fountain pens and pencils, and others of similar import or meaning not herein set out, respondent represent directly or by implication that:

1. That said fountain pens and pencils are of such superior quality and durability that they will last forever, without the necessity of repair or adjustment.

2. That said fountain pens and pencils are guaranteed without limitation as to time.

PAR. 4. The aforesaid statements and representations so made and used by respondent are false, misleading and deceptive. Respondent's said fountain pens and pencils are not of such superior quality and durability that they will last forever, without the necessity of repair or adjustment. Said fountain pens and pencils are not guaranteed without limitation as to time. Whenever one of said fountain pens or pencils is sent to respondent for adjustment, respondent exacts a charge of 35¢ purportedly for postage, insurance and handling. This charge is made no matter how insignificant the repair or adjustment may be. Respondent's purported guarantee is, therefore, in no sense a genuine guarantee without limitation as to time, nor is it a guarantee for any particular time or at all. It is in fact merely a contract whereby respondent, while it continues in business, agrees with the purchaser of one of said fountain pens or pencils to make necessary repairs and adjustments at a flat rate of 35¢ each time the pen or pencil is sent to it for such service.

PAR. 5. The aforesaid acts, practices and representations of the respondent herein detailed in connection with the advertising and sale of its aforesaid fountain pens and pencils had, and now have, the tendency and capacity 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 acts, practices and representations are true, and into the purchase of substantial quantities of respondent's fountain pens and pencils because of such erroneous and mistaken belief so induced.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 September 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Eversharp, Inc., a corporation, charging it with the use of 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, brief in support of the complaint (no brief having been filed by respondent), 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, Eversharp, Inc., 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 Chicago, Ill. Respondent is now, and for some five 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 Illinois, 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. In the course and conduct of its business and for the purpose of inducing the purchase of certain of its fountain pens and pencils, respondent advertises such products by means of advertisements inserted in newspapers, magazines and other publications having general circulation throughout the United States, and particularly by means of continuities broadcast from radio stations which convey the programs emanating therefrom to listeners located in many States of the United States other than the State in which such broadcasts originate. Respondent has also used point-of-sale advertising, supplying to its retail dealers posters, cards, etc., for display to the public. At the present time approximately ninety percent of respondent's advertising is done by means of radio broadcasts.

In its advertising respondent has represented, among other things, that the pens and pencils in question are "guaranteed forever," the customary statement being that the pens and pencils are "guaranteed not for years—not for life—but GUARANTEED FOREVER."

A service charge of 35 cents is made by respondent each time one of the pens or pencils is returned to it by the owner for repair. (The charge is only 25 cents if the pen or pencil is delivered in person at respondent's main office or at one of its branch offices.) Formerly, respondent's advertisements made no disclosure of the fact that a service charge must be paid, but the more recent advertisements have contained a reference to the charge. However, in some of the radio broadcasts, which usually last 30 minutes, the reference to the service charge is not made each time the guarantee is mentioned but is deferred until near the close of the program.

The guarantee certificate formerly issued by respondent in connection with its pens read as follows:

GUARANTEED FOREVER

The Eversharp Gold Seal Doric Pen is GUARANTEED FOREVER—except against loss, theft, willful damage or abuse. This means specifically it is guaranteed to give you faithful service *without limitation as to years*.

No charge will be made for repairs except a slight service charge of thirty-five cents (35¢) to cover handling, postage and insurance. Regular charges will be made for missing parts and parts which must be replaced due to willful damage or abuse.

Only genuine Eversharp parts may be used in this pen. If any other are used, the guarantee is void, but may be reinstated by having the pen properly repaired with genuine Eversharp parts at regular list prices.

For prompt service mail, together with all broken parts and guarantee coupon, either to our factory or your Eversharp dealer.

Date..... Dealer's Name.....
Eversharp, Inc. 1800 Rosco Street Chicago

Substantially the same form of certificate has been used in connection with the pencil.

(Since the institution of this proceeding, respondent has revised its advertising and now states that the *service* on the pens and pencils is guaranteed forever. The guarantee certificate has been similarly modified.)

PAR. 4. The Commission finds that through the use of the statement “guaranteed forever” and others of similar import in connection with its pens and pencils, respondent has represented, directly or by implication, that such pens and pencils are unconditionally guaranteed forever or without limitation as to time—that is, that if at any time and for any reason other than wilful damage or abuse the pen or pencil should fail to give satisfactory service, it will be repaired or replaced by respondent without charge.

PAR. 5. The record affirmatively shows that every year many thousands of the pens and pencils are returned to respondent by the owners for necessary servicing, repair, or replacement of parts. The servicing of the pens and pencils is done by respondent at a loss, as the cost of the servicing in the average case exceeds the amount of the service charge.

In view of the service charge imposed by respondent, its products cannot properly be represented as guaranteed forever or for any other period of time. The purported guarantee is not in fact a guarantee of the pen or pencil but is merely a contract whereby respondent agrees that it will at any time make necessary repairs and adjustments to the pen or pencil at the flat rate of 35 cents each time the pen or pencil is returned to the respondent for such service. The most that can be said of the agreement is that it is a guarantee of repair service. It is in no sense a guarantee of the pen or pencil itself.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to its pens and pencils, as set forth above, are erroneous and misleading.

Nor is the misleading effect of respondent's representations avoided by the insertion in the advertisements of the statement with respect to the service charge. The reason for this is that the statement is inconsistent

with and contradictory of the representations in the advertisement that the pen or pencil is unconditionally guaranteed forever. The imposition of a charge for keeping the pen or pencil in usable condition is in direct conflict with respondent's representation that the products are unconditionally guaranteed.

PAR. 7. The use by respondent of the erroneous and misleading representations herein set forth 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 and pencils are unconditionally guaranteed forever, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice of the public, and constitute 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, brief in support of the complaint (no brief having been filed by respondent), 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, Eversharp, Inc., 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 and mechanical pencils in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "guaranteed forever," or any word or words of similar import, alone or in conjunction with any other word or words, to designate, describe, or refer to respondent's products, or otherwise representing, directly or by implication, that such products are unconditionally guaranteed forever or without limitation as to time, unless respondent does in fact make, without expense to the user, any repairs or replacement of parts which may be necessitated at any time by any cause other than wilful damage or abuse.

2. Representing, directly or by implication, that respondent's products 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 products (as distinguished from the products themselves) is guaranteed forever or for any other designated period of time, even though a charge

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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
L. E. WATERMAN COMPANY

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

Docket 4617. Complaint, Oct. 17, 1941—Decision, May 3, 1945

Where a corporation, engaged in the manufacture and interstate sale and distribution of fountain pens and mechanical pencils, including its "100 Year Pen"; making use of a purported guarantee, set forth on a card included in the individual container of said pen, which read "Waterman's HUNDRED YEAR PEN, identified by the words: 'Waterman's Hundred Year Pen' on the point, is guaranteed for one hundred (100) years except against loss or wilful damage, and no charge will be made for putting it in good writing condition at any time within one hundred years from date of purchase provided the pen, complete with all damaged parts, is sent to our factory accompanied by a postage, handling and insurance charge of 35¢ . . ."—

Represented, directly or by implication, through the use of said "Guarantee" and the words "Waterman's Hundred Year Pen" on the pen point, and by said trade-name "100 Year Pen" and the statements "100 Year Guarantee," "Guaranteed for 100 Years," "Guaranteed for a Century" and others similar thereto in advertisements in newspapers, magazines and other publications of general circulation and in catalogs, circulars and other advertising media, that its said pens were unconditionally guaranteed for one hundred years, 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 by respondent without charge; and failed to avoid the misleading effect of such representations through the later inclusion in its advertisements, usually in small type and frequently at or near the bottom, of a statement reading, "Waterman's 100 Year Pens are guaranteed for a century against all but loss or wilful damage if returned to factory with 35¢ to cover postage, handling and insurance";

The facts being that in view of the service charge imposed by it, its pen could not properly be represented as guaranteed for one hundred years or for any other period of time; the purported guarantee was not in fact a guarantee of the pen but merely a contract whereby it agreed that for a period of one hundred years it would make necessary repairs and adjustments to the pen at the flat rate of thirty-five cents each time the pen was returned 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 of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its pens were unconditionally guaranteed for one hundred years, and to cause such public to purchase substantial quantities of its pens as a result thereof:

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

As respects the question of the misleading effect of advertisements by a seller of its "100 Year Pen," featuring said name together with statements such as "Guaranteed for One Hundred Years" and "Guaranteed for a century" which included, usually in small type and at or near the bottom the statement "Waterman's 100