Syllabus

IN THE MATTER OF

# C. HOWARD HUNT PEN CO.

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

*Docket 4918. Complaint, Feb. 20, 1943—Decision, Mar. 29, 1951*

Where a corporation engaged, among other things, in the manufacture and competitive interstate sale and distribution of inexpensive fountain pen points which it sold to manufacturers and assemblers of fountain pens for incorporation into fountain pens to be sold to the consuming public;

(*a*) Stamped on certain of its said points such inscriptions as "14 Kt. Gold Plated" or "14 K Gold Plated"; with tendency to deceive the purchasing public into the belief that said points were plated with a substantial amount of 14 karat gold alloy of substantial thickness, the minimum necessary to protect them from the corrosive effects of ink;

(*b*) Stamped certain pens "Iridium Point" or "Iridium Tipped," notwithstanding the fact that none of the tipping materials it used contained any iridium, noted for its hardness and wear-resistant properties; with tendency to deceive the purchasing public in such respect; and,

(*c*) For a time stamped on certain pen points, in accordance with instructions from a certain company to which it sold them the inscription "Waltham," notwithstanding the fact that the well-known manufacturer of high-grade watches and precision instruments had no connection with the pen points so marked; with tendency to deceive the purchasing public into the belief that said products were those of the Waltham Watch Manufacturing Co.;

With the result of furnishing manufacturers and assemblers of pens with the means of deceiving the public in the aforesaid respects, and with capacity to deceive and mislead a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and thereby into the purchase of substantial quantities of its said pen points, and to divert unfairly to it trade and commerce from its competitors who do not falsely represent their products, to the injury of competition in commerce:

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

As respects respondent's contention that the terms "Iridium Point" and "Iridium Tipped" had acquired a secondary meaning and now mean to the trade and to the public merely that pen points so designated are tipped with a hard, wear-resisting material: the Commission found that said contention was not supported by the record and that respondent's use of said terms to describe its products was erroneous and misleading.

As respects respondent's contention that since the word "Waltham" was inscribed only upon pen points ordered by the company above referred to and upon its instructions, and since respondent's last shipment of pen points thus marked was made about 2 years prior to the issuance of the complaint, no order to cease and desist should be entered as to such representations:

the Commission found that respondents by thus acting had placed in the hands of said company the means of deceiving the public and, in view of respondent's contention throughout the proceedings that it was not guilty of any deception since it was acting on instructions from its customer in using the name, was of the opinion that there was no assurance that respondent might not resume the practice, and therefore found that an order requiring it to cease and desist from inscribing the name on its pen points, under the circumstances, was in the interest of the public.

As respects respondent's contention that since it had entered into and abided by a stipulation, prior to the issuance of the complaint in the instant matter, to cease and desist representing that its pen points were solid gold, no order to cease and desist should be entered by the Commission as to such representation: the Commission was of the view that respondent's continued representation that its pen points were 14 karat gold plated, when they were in fact coated with such a thin covering, of such minute quantity, of gold alloy as not to constitute 14 karat gold plate as understood by the purchasing public, was so similar to its aforesaid prior false representation that said points were made of 14 karat gold, as to create a doubt as to whether respondent might not in the future resume the practice of falsely so representing, and that therefore an order requiring it to cease and desist from falsely representing that its pen points were made of an alloy of gold was in the interest of the public.

Before *Mr. Andrew B. Duvall* and *Mr. Henry P. Alden*, trial examiners.

*Mr. Karl Stecher* and *Mr. William L. Pencke* for the Commission.

*Synnestvedt & Lechner*, of Philadelphia, Pa., 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 C. Howard Hunt Pen Co., a corporation, 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. Respondent, C. Howard Hunt Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of Camden, State of New Jersey.

PAR. 2. Respondent is now and for some years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including cheap fountain-pen points. Respondent causes said

products, when sold, to be shipped from its said place of business in the State of New Jersey to the purchasers thereof located in 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 its said fountain-pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said fountain-pen points, respondent has caused and now causes certain descriptive words, figures, letters, and symbols to be stamped or imprinted upon the pen points which it sells in commerce as aforesaid. Typical of the symbols on respondent's said pen points, all of which pen points have the appearance of gold, are the following:

DURIUM
14 Kt. Gold
Plated
No. 4

Southern Pen
14K (large figures and letter)
gold plated (very small letters)
durium (very small letters)

ARNOLD
DURIUM
petersburg
va.

DURIUM
14K (very large figures and letter)
gold plate (very small letters)

WARRANTED DURIDIUM
14KT. (very large letters and figures)
gold plate (very small letters)

DURIPOINT
14 (very large figures)
KT. (very large letters)
(large space)
gold plate (very small letters)

EVERLAST
MADE
IN
U. S. A.

DURIUM
14K (very large figures and letter)
gold plate (very small letters)

WARRANTED DURIUM TIPPED
14K (very large figures and letter)
gold plate (very small letters)

WALTHAM
DU-O-WAY
TIP
MADE IN
U. S. A.

WALTHAM
DU-O-WAY
TIP
14K
gold plate

DU-O-WAY
TIP
(STAR IN CIRCLE)
14 KT
GOLD PLATE

IRIDIUM
TIPPED

PAR. 4. The words "Durium," "Duridium," and "Duripoint" when used in the manner set forth in paragraph 3 above, either alone or in combination with "tip" or "tipped," constitute a representation

that respondent's pen points thus designated and described are tipped with some special substance of unusual hardness and wearing qualities. Respondent's use of the word "Everlast" as illustrated in paragraph 3 hereinabove constitutes a representation that respondent's pen point thereby referred to is made of especially durable materials and is everlasting or of unusual lasting qualities. The word "Waltham" used by respondent in the manner set forth in paragraph 3 above has the capacity and tendency to create and creates in the minds of a substantial portion of the purchasing public the impression that respondent's fountain pen points thereby referred to are products of the Waltham Watch Co., a long-established and well-known manufacturer of high-grade watches and precision instruments.. The coined word "Du-O-Way" used by respondent in the manner set forth in paragraph 3 above tends to create the impression in the minds of many members of the purchasing public that there is some connection between the pen points so designated and referred to and the "Duofold" pen, a favorably known and widely advertised product of the Parker Pen Co. Respondent's use of the words "Iridium tipped" stamped on its said pen points as illustrated in paragraph 3 hereinabove constitutes a representation that said pen points are tipped with a comparatively rare and expensive element known as iridium.

PAR. 5. In truth and in fact the words "Durium," "Duridium," and "Duripoint" are coined and are not known to science or the industry in question and the pen points which they are used to describe are not tipped with any material or element of unusual hardness or wearing qualities. The pen point called "Everlast" is not made of especially durable materials nor has it unusual lasting qualities. The Waltham Watch Co. has nothing to do with the manufacture of the pen point designated "Waltham Du-O-Way" and the Parker Pen Co. has nothing to do with the manufacture of pen points with reference to which the coined word "Du-O-Way" is used in the illustrations shown in paragraph 3 hereinabove. None of respondent's pen points are tipped with the element iridium.

PAR. 6. The inscription "14Kt. Gold" in the first combination of words and figures quoted in paragraph 3 hereof, in appearing on one and the same line, has the capacity and tendency to create and creates the impression in the minds of many members of the purchasing public that respondent's pen point described therein is made of 14-carat gold.

In the other illustrations set forth in paragraph 3 hereinabove the figures and letters "14K" and "14KT" are invariably stamped in large type in a conspicious place on respondent's pen points and under-

neath the same there is stamped the legend "Gold Plate" or "Gold Plated" in type so small in each instance as to be inconspicuous and even illegible to a large portion of the purchasing public without the aid of a magnifying glass; these words "Gold Plate" and "Gold Plated" are stamped so far down the shank of the pen point that they are hidden from view when the point is properly fixed in the barrel of the pen, so that the purchasing public can see only the symbol "14K" or "14KT" which is a representation, direct or implied, that respondent's said pen points are made of 14-carat gold.

PAR. 7. As a matter of fact none of respondent's pen points are made of 14-carat gold or gold of any fineness. Respondent's pen points are made of brass or steel thinly electroplated with gold of approximately 22-carat fineness which does not have the hardness and wearing qualities of genuine 14-carat gold.

PAR. 8. Pen points made of gold are considered by many to have exceptional durability and superior writing qualities and many believe that the most satisfactory alloy for high-grade pen points is 14-carat gold. Originally all fountain pen points were made of 14-carat gold.

For years many of the most prominent and largest manufacturers of high-grade fountain pens whose points were made of 14-carat gold put no carat marking at all on their pen points and this practice is still followed by some of said manufacturers of high-grade fountain pens, but the public has generally understood and still understands that said points were and are made of 14-carat gold. Other reputable manufacturers have truthfully stamped and do stamp the symbols "14K" or "14KT" on their pen points and the public has for years associated such symbols with gold pen points.

PAR. 9. Respondent's pen points which are stamped "Gold Plated" or "Gold Plate" are not in fact gold plated as that term is commonly used and understood by a substantial portion of the purchasing public. The amount of gold deposited on said pen points is insignificant both in quantity and value. It is so small as not to be worth the expense of attempting to salvage it from damaged pen points. Less than 8 cents' worth of gold is deposited on each gross of respondent's so-called gold plated pen points.

PAR. 10. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points branded and stamped as hereinabove set out in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points colored, stamped, and branded as

aforesaid, respondent furnishes said manufacturers and assemblers with the means of deceiving the public into the belief that said fountain pen points are made of genuine 14-carat gold and that they are tipped with iridium or some other durable material; that they have unusual lasting qualities; that those stamped with the name "Waltham" are made by the well-known watch manufacturer of that name; and that those points referred to or designated by the word "Du-O-Way" are products of the Parker Pen Co.; and with the further means of deceiving the public with respect to the value and quality of said fountain pens.

PAR. 11. There are among the competitors of respondent many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points that truthfully brand, label, color, and represent their pen points.

PAR. 12. The aforesaid acts, practices, and representations of the respondent have 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, misleading, and deceptive acts, practices, and representations are true and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they thereby have the capacity and tendency to divert unfairly and they have diverted to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 13. 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 February 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, C. Howard Hunt Pen Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of said 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 designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. The report of the trial examiner upon the evidence and exceptions to such report having been filed, the proceeding came on for hearing before the Commission upon the record, and the Commission, being of the opinion that the evidence in the record was insufficient to enable it to determine the issues, ordered the proceeding reopened for the introduction of further evidence. In conformity with the directions contained in that order, additional testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a substitute trial examiner of the Commission theretofore duly designated by it, and such additional testimony and other evidence, together with the recommended decision of the substitute trial examiner and exceptions thereto, were duly reported and filed. Subsequently, the proceeding was submitted to the Commission upon the record, including a stipulation of counsel consenting to the issuance by the Commission of an order to cease and desist corresponding in form and substance with the draft of the order set forth in the trial examiner's recommended decision and waiving the filing of briefs and oral argument. The Commission being of the opinion that the said recommended order to cease and desist should be altered in certain material respects, however, declined to dispose of the proceeding by the issuance of the order recommended by the trial examiner and issued a tentative order to cease and desist, with leave to respondent to file a brief in opposition to such order and request oral argument thereon.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony, and other evidence, the report of the original trial examiner upon the evidence and exceptions to such report, the substitute trial examiner's recommended decision and the exceptions thereto of counsel for respondent, briefs in support of and in opposition to the complaint and oral argument thereon, and briefs and oral argument in opposition to and in support of the entry of the aforesaid tentative order to cease and desist; and the Commission having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner 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, C. Howard Hunt Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Seventh and State Streets, Camden, N. J.

PAR. 2. Respondent is now and for many years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including inexpensive fountain pen points. Respondent sold and is now selling such pen points to manufacturers and assemblers of fountain pens who incorporate the said pen points into fountain pens sold by it to the consuming public. Respondent causes its said products, when sold, to be shipped from its place of business in the State of New Jersey to the purchasers thereof located in 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 its said fountain pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent is now and for many years last past has been stamping on certain of its said points inscriptions containing representations as to the composition and quality of the said points or the tips thereof. Among and typical of the representations stamped thereon are the following:

14 Kt Gold Plated
14 K Gold Plate
Iridium Point
Iridium Tipped

The use by respondent of the inscriptions "14 Kt Gold Plated" and "14 K Gold Plate" and others of similar import and meaning not set out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked are plated with a substantial amount of 14 caret gold alloy of substantial thickness. In truth and in fact, respondent's fountain pen points so marked are not plated with a substantial amount of gold alloy and the plating on the said points is not of a substantial thickness. Its said points so marked are coated with a gold alloy of a thickness of less than 0.000007 of an inch. Certain of said points manufactured by respondent prior to 1938 were tested by the National Bureau of Standards and were found to be coated with a gold alloy of a thickness of from approximately 0.0000036 to less than 0.000002 of an inch, which gold alloy had a value of approximately 5 cents

per gross of pen points.[1] The coating of gold alloy on the pen points so tested consisted of such a minute quantity that its actual carat fineness could not be determined. There is no evidence that respondent's methods of gold plating their pen points have varied from the time of manufacture of the pen points so tested.

Fourteen carat is a standard of fineness representing that an object so marked consists of an alloy which contains $14/24$ pure gold by weight. Gold plating of 14 carat fineness is the lowest carat fineness of gold which will succesfully resist the corrosive effects of ink. A substantial thickness of gold plating of a fineness of not less than 14 carat is necessary to protect fountain pen points from such corrosion. One of the purposes of gold plating fountain pen points is to protect them from such corrosion. Fountain pen points which are covered with a substantial thickness of gold plating of a fineness of not less than 14 carat have great appeal to the consuming public because of the appearance, intrinsic value and known resistance to corrosion of the gold.

The use by respondent of the inscriptions "Iridium Point" and "Iridium Tipped" and other similar in import and meaning not set-out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that the said fountain pen points are tipped with iridium, a metal which is noted for its hardness and wear-resistant properties. Actually, none of the tipping materials used by respondent for its pen points contain any iridium.

Respondent contends that the terms "Iridium Point" and "Iridium Tipped" have acquired a secondary meaning—that these terms now mean to the trade and the public merely that pen points so designated are tipped with a hard, wear resisting material. The Commission finds, however, that this contention is not supported by the record and that respondent's use of these terms to designate and describe its products is erroneous and misleading.

PAR. 4. In the course and conduct of the aforesaid business in 1941 and for several year prior thereto, respondent stamped the inscription "Waltham" on certain fountain pen points which it sold to the Starr Pen Co., of Chicago, Ill., in accordance with instructions from that company. The use by respondents of the inscription "Waltham" had the tendency and capacity to deceive and mislead the purchasing

[1] Although the record is silent as to what would constitutte a substantial thickness of gold alloy in gold plating, it is noted that the Commission on October 11, 1948, promulgated trade practice rules for the fountain pen and mechanical pencil industry. These rules provided, among other things, that the term "gold plated" is deceptive when used as descriptive of fountain pen parts which have a covering of gold or of gold alloy of a minimum thickness throughout of less than 0.000007 of an inch.

public into the belief that the said fountain pen points so marked were products of the Waltham Watch Manufacturing Co., a well-known manufacturer of high-grade watches and precision instruments. Actually, the Waltham Watch Manufacturing Co., had no connection with the manufacturing, sale, or delivery of the said fountain pen points so marked.

PAR. 5. In the course and conduct of the aforesaid business for several years prior to 1939, respondent stamped on certain of its pen points the inscription "14 K" or "14 Kt" in large type and underneath stamped the inscription "Gold Plate" or "Gold Plated" in type so small as to be inconspicuous and almost illegible. On certain of these pen points the inscriptions "Gold Plate" or "Gold Plated" were stamped so far down the shank of the pen point as to be hidden from view when the point was properly fixed in the barrel of the fountain pen. The use by respondent of such inscriptions in this manner has had the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked were made of an alloy of gold. In truth and in fact such pen points were made of other materials coated with an alloy of gold.

On July 31, 1939, respondent entered into an agreement with the Commission to cease and desist from continuing to mark its fountain pen points in any manner having the capacity or tendency to cause the belief that the pen points are of 14 carat solid gold when such is not the fact. Since that agreement, on all pen points manufactured by respondent marked with the incription "14 K Gold Plate" or "14 Kt Gold Plated," the said numerals and letters thereon have been of the same size, and the words "Gold Plate" or "Gold Plated" have been placed sufficiently far from the base of the pen point so as to always be clearly visible when the point so marked was assembled in the completed fountain pen.

PAR. 6. The evidence of record is not sufficient to sustain the allegations of the complaint that respondents use of the words "Durium," "Duridium," and "Duripoint," either alone or in combination with the words "tip" or "tipped," has the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into believing that its pen points so marked were tipped with some special substance of unusual hardness and wearing qualities; that respondents use of the word "Du-O-Way" tends to create an impression in the minds of a substantial portion of the purchasing public that there is some connection between the pen points so marked and pen points inscribed with the word "Duofold," a mark used on pens manufactured and sold by the Parker Pen Co.; that the Parker Pen Co. used the

word "Duofold" before respondent used the word "Du-O-Way," or has any superior rights to the word; that respondent's pen points marked with the word "Everlast" were not made of especially durable materials and were not of unusual lasting qualities; or that the public has been misled, or is likely to be misled or deceived, by the golden color of respondent's pen points, into falsely believing that such points are either made of gold alloy or are gold-plated.

PAR. 7. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points stamped and inscribed, as set out in paragraph 3, 4, and 5 hereof, in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points stamped and inscribed as aforesaid, respondent has furnished said manufacturers and assemblers with the means of deceiving the public into the belief that certain of the said fountain pen points were made of genuine 14 carat gold, that certain other fountain pen points were plated with a substantial quantity of 14 carat gold of substantial thickness, that certain other fountain pen points were tipped with iridium and that certain other pen points were products of the Waltham Watch Manufacturing Co.

PAR. 8. Respondent contends that, inasmuch as the word "Waltham" was inscribed only upon its pen points ordered by the Starr Pen Co. upon its instructions, and inasmuch as the respondent's last shipment of pen points so marked was made in July of 1941, approximately 2 years prior to the issuance of the complaint herein, no order to cease and desist should be entered as to these representations. The Commission having found that by so acting respondent placed in the hands of the Starr Pen Co. the means of deceiving the public, and because respondent has contended throughout these proceedings that it was not guilty of any deception because it was acting on instructions from its customer in using the name "Waltham," it is of the opinion that there is no assurance that respondent may not resume this practice and therefore finds that an order requiring respondent to cease and desist from inscribing "Waltham" on its pen points, under the circumstances, is in the interest of the public.

Respondent further contends that, inasmuch as it entered into a stipulation with the Commission prior to the issuance of the complaint in this matter wherein it agreed to cease and desist from representing that its pen points are of solid gold, and inasmuch as it has complied with that agreement, no order to cease and desist should be entered by the Commission as to such representation. The Com-

mission has found that respondent has continued to represent that its pen points are 14 carat gold-plated when in fact they are coated with such a thin covering of such a minute quantity of gold alloy as to not constitute 14 carat gold plate as that term is understood by the purchasing public. In the view of the Commission the respondent's false representation that its pen points are plated with 14-carat gold and its prior false representation that the pen points are made of 14-carat gold are so similar as to create a doubt as to whether the respondent may not in the future resume the practice of falsely representing that its pen points are made of 14-carat gold. The Commission therefore finds that an order requiring respondent to cease and desist from falsely representing that its pen points are made of an alloy of gold is in the interest of the public.

PAR. 9. Respondent in the course and conduct of its aforesaid business has been and is now in active competition with many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points and who truthfully brand, label, and represent their pen points.

PAR. 10. The acts, practices, and representations as found in paragraphs 3, 4, and 5 of these findings have had and now have the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts, practices, and representations are true, and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they hereby have the capacity and tendency to divert unfairly to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among 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 respondent's

answer thereto, testimony, and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, the report of the original trial examiner upon the evidence and exceptions to such report, the recommended decision of the substitute trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint and oral argument thereon and briefs and oral argument in opposition to and in support of a tentative order to cease and desist attached to the Commission's order of May 22, 1950, rejecting the trial examiner's recommended order to cease and desist and affording the respondent an opportunity to show cause why said tentative order should not be entered as the Commission's order to cease and desist; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and 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, C. Howard Hunt Pen Co., 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, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of fountain pen points, do forthwith cease and desist from:

(1) Representing, through the use on fountain pen points of the term "14 Kt. Gold Plated" or "14 K. Gold Plate," or any other term or mark, that such points are coated or covered with an alloy of substantial thickness and not less than $^{14}/_{24}$ by weight of gold, when such is not the fact; or misrepresenting in any manner the quantity or quality of the gold coating or covering on any fountain pen points.

(2) Representing in any manner, direct or by implication, that fountain pen points are made of an alloy of gold when such points are in fact made of other materials and are merely coated or covered with an alloy of gold.

(3) Using the word "Iridium" or the words "Iridium Tipped," or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any fountain pen points which are not in fact tipped with the element iridium.

(4) Using the word "Waltham" as an imprint on or in connection with the sale of any fountain pen points; or otherwise representing that any of the respondent's fountain pen points are the products of the Waltham Watch Manufacturing Co. of Waltham, Mass.

*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.

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IN THE MATTER OF

# FASHION TOWNE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5678. Complaint, July 12, 1949—Decision, Apr. 3, 1951*

Where a corporation and two officers thereof who dominated its affairs, engaged in the introduction into commerce, and in the offer, sale, transportation, and distribution therein of wool products subject to the Wool Products Labeling Act and to the rules and regulations promulgated thereunder—

Misbranded certain ladies two-piece suits in violation of the provisions of said act in that coats of said suits were labeled as 100 percent wool when they contained 81½ percent wool and 18½ percent cotton, and the skirts thereof were not labeled in any manner nor provided with other means of identifying their fiber content:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. Jesse D. Kash* for the Commission.

*Posner, Berge, Fox & Arent*, of Washington, D. C., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, individually and as officers of Fashion Towne, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary and treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-

seventh Street, New York, N. Y. Said individual respondents dominate the affairs of corporate respondent and are responsible for its acts and practices including those hereinafter referred to. Respondents Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, are engaged in the manufacture for introduction and in the introduction into commerce, and in the sale, transportation and distribution in commerce of wool products, as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

PAR. 2. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation, and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported, and distributed in commerce by respondents are ladies' suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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 and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on July 12, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer was filed by the respondents. On April 21, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a recommended decision by the trial examiner. The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and the respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the complaint and stipulation, said stipulation having been approved, accepted, and filed; 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 Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary-treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y. Said individual respondents dominate the affairs of the corporate respondent and are responsible for its acts and practices, including those hereinafter referred to.

PAR. 2. The respondents are engaged in the introduction into commerce, and in the offering for sale, sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products as such products are defined in said Wool Products Labeling Act of 1939. Certain of respondents' said products are composed, in whole or in part, of wool, reprocessed wool, or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. During the months of February and March 1949, respondents violated the provisions of said act and rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. During the months of February and March 1949, respondents introduced into commerce, and sold, transported, and distributed in commerce, ladies' two-piece suits, styles 512 and 523, both pieces of which contained woolen fibers. The coats of these suits contained 81½ percent wool and 18½ percent cotton, but were labeled by respondents as 100 percent wool. The skirts of these suits were not labeled by respondents in any manner, nor did respondents provide any other means of identifying their fiber content. Both the coats and skirts of such suits were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling

Act of 1939 and the rules and regulations thereunder, and constituted 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 and a stipulation as to the facts entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which stipulation the respondents waived 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 the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Fashion Towne, Inc., a corporation, and its officers, and Morton Davis and Anna Davis, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the aforesaid acts, of ladies' suits or other wool products as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such ladies' suits or other products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

*It is further ordered*, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

# EARL ARONBERG ET AL. TRADING AS THE RONALD CO.

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

*Docket 5729. Complaint, Dec. 22, 1949—Decision, Apr. 5, 1951*

Where two individuals engaged in the interstate sale of their "Shadz Color Shampoo"; in advertising in various periodicals and otherwise—

Falsely represented, directly and by implication, that their said product, used as directed, colored gray hair jet black and other colors; when in fact an acid medium is required to color hair, whereas the ingredients in said product produce an alkaline medium;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce its purchase of substantial quantities of said product:

*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.

As regards the charge in the complaint that respondents falsely represented their product to be a new discovery, no evidence was introduced with respect to such allegation, and no findings, consequently, were made with respect thereto.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Frank E. & Arthur Gettleman*, of Chicago, Ill., and *Mr. James B. Goding*, of Washington, D. C., 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 Earl Aronberg and Lewis Potter, individuals trading as The Ronald Co., hereinafter 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. Respondents, Earl Aronberg and Lewis Potter, are individuals trading as The Ronald Co. with their office and principal place of business located at 6605 Cottage Grove, Chicago, Ill.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the business of selling and distributing a cosmetic