

## Syllabus

## IN THE MATTER OF

## WINDSOR PEN CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5829. Complaint, Dec. 1, 1950—Decision, Feb. 19, 1952*

By virtue of the established custom of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of their country of origin in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign-made or imported mechanical pencils.

When products composed in whole or in substantial part of imported articles, are offered for sale and sold in the channels of trade in commerce, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless they are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There is now and has been among the members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

Where a corporation and its president, engaged in the assembling of fountain pens and mechanical pencils and in the interstate sale and distribution thereof to jobbers and retailers for sale to the general public, purchasing mechanisms for their pencils imported from Japan in bulk in containers plainly stamped with the country of origin, which contained on the spiral end the words, "Made in Japan" in such small print as to require magnification to read;

- (a) Sold pencils which they assembled by press fitting said mechanisms into the pencil barrels so that the words "Made in Japan" were completely concealed, without disclosing otherwise on said pencils or on their containers, that any part of the product was of foreign origin; and
- (b) Affixed clips bearing the words "Windsor USA" to certain brands of their said pencils, usually shipped in sets with fountain pens in cartons plainly marked with respondent's corporate name and the words "New York, N. Y."; With tendency and capacity to mislead members of the consuming public into the erroneous belief that said pencils were wholly of domestic origin, and into the purchase thereof in reliance upon such belief; and
- (c) Furnished, on request of their jobbers and dealers, price tags or stickers ranging from \$3.50 to \$22.50 for use on said sets;

## Complaint

48 F. T. C.

The facts being that said boxed sets, which included said pencils and one or more fountain pens sold as units, were sold by respondents at prices ranging from \$2.80 to \$5.00 per dozen, and, together with other articles, up to \$12.00 per dozen;

With the effect of providing their distributors and dealers with a means or instrumentality for grossly deceiving the buying public as to the usual and customary prices of said pen and pencil sets, and of inducing the purchase thereof in reliance upon such belief:

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

Before *Mr. Clyde M. Hadley*, hearing examiner.

*Mr. Morton Nesmith* and *Mr. William L. Pencke* for the Commission.

*Wolf & Burrell*, of New York City, 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 Windsor Pen Corporation, a corporation, and Morris Fink and Sady Fink, individually and as officers of said corporation, hereinafter referred to as respondents, have 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 Windsor Pen Corporation is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business at 352 Fourth Avenue, New York 10, New York.

Respondents Morris Fink and Sady Fink are President and Secretary-Treasurer, respectively, of said corporation with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct and control the policies and practices of corporate respondent.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products.

PAR. 3. The respondents cause said products when sold to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said

products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business, respondents purchase mechanisms, actions or movements for their pencils which have been imported from Japan in bulk quantities. These mechanisms, actions or movements are received by them in packages, boxes or wrapping plainly stamped with the country of origin and with the words "Made in Japan" stamped on the spiral end of said mechanisms, actions, or movements. Respondents assemble mechanical pencils by press fitting these mechanisms, actions or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press fitting, the words "Made in Japan" appearing on the mechanisms, actions or movements are completely concealed. At no place on these pencils, or on the boxes in which they are packed, is the fact disclosed that any part thereof is of foreign origin. On the contrary, the clips which are affixed to these mechanical pencils are stamped or imprinted with the letters "U. S. A." and said pen and pencil sets are shipped in cartons plainly marked "Windsor Pen Corporation, New York, N. Y."

The mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by respondents at prices ranging from \$2.80 per dozen to \$5.00 per dozen, and together with other articles, as high as \$12.00 a dozen. Respondents furnish, on request of its jobbers or dealers, price tags or stickers of various denominations, such as \$3.50, \$6.50, \$7.50, \$10.00, \$17.20, and \$22.50.

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The pen and pencil sets sold by respondents are rarely if ever sold to the purchasing public for \$3.50, \$6.50, \$7.50, \$10.00, \$17.20, or \$22.50. Respondents' practice of supplying price tags or stickers in these various denominations which may be and are affixed to boxes containing said sets provides a means and instrumentality by and through which dealers may and do grossly misrepresent the usual and customary prices of said sets.

PAR. 7. The practice of respondents as aforesaid in affixing metal pocket clips, upon which are imprinted the letters, "U. S. A." to the mechanical pencils manufactured or assembled by them, which pencils contain Japanese mechanisms, actions or movements, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents as aforesaid in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin without any imprinting, labeling, or conspicuous marking on the pencils or on the individual cartons in which they are packed to indicate to purchasers that the mechanisms, actions or movements of said pencils are of Japanese origin, has had, and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents as aforesaid in supplying its customers with price tags, or stickers with amounts thereon greatly in excess and disproportionate to the customary or usual selling price for said articles, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and induces a substantial amount of

the purchasing public to purchase said products as a result of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT  
OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 1, 1950, issued and subsequently served its complaint 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 that Act. Hearings were held in this matter before a hearing examiner duly designated by the Commission. Respondents' answer to the complaint was read into the record by their counsel at the initial hearing herein. At a subsequent hearing, counsel supporting the complaint and counsel for the respondents stipulated and agreed that a statement of facts thereupon read by them into the record might be taken as the facts in this proceeding and in lieu of evidence in support of the complaint and in opposition to the charges stated therein, and that such statement of facts might serve as the basis for findings as to the facts, conclusion and order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, the stipulated facts, proposed findings and conclusions presented by counsel for respondents, and oral argument by counsel, and said hearing examiner filed his initial decision herein on July 12, 1951.

Counsel for the respondents Windsor Pen Corporation and Morris Fink, on August 9, 1951, filed with the Commission an appeal from said initial decision. Thereafter, this proceeding having regularly come on for final hearing by the Commission upon said appeal, including the brief in support thereof, memorandum of authorities filed in opposition thereto and oral argument of counsel, the Commission issued its order denying said appeal.

The Commission is of the opinion, however, that the order contained in the hearing examiner's initial decision is ambiguous in certain respects. Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Windsor Pen Corporation is a New York corporation with its office and principal place of business at 352 Fourth Avenue, New York 10, New York. Respondent Morris Fink is the president of said corporation with his office and principal place of business at the same address as corporate respondent. Said individual respondent Morris Fink formulates, directs and controls the policies and practices of corporate respondent.

The allegations of the complaint as to respondent Sady Fink are not supported by the evidence of record, and, therefore, she is not included in the term "respondents" as used hereinafter.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products, in commerce between and among the various States of the United States, to jobbers and retailers who in turn sell said products to the general public. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents have purchased mechanisms, actions or movements for their pencils which have been imported from Japan in bulk quantity. These mechanisms, actions or movements were received by the respondents in packages, boxes or wrappings plainly stamped with the country of origin, namely, Japan. When received by the respondents, said mechanisms, actions or movements, on the spiral end thereof, are imprinted with the words "Made in Japan" in such small print as to require magnification to read legibly.

PAR. 4. Respondents assemble mechanical pencils by press fitting these mechanisms, actions or movements into the pencil barrels so that in the process of such press fitting the words "Made in Japan," as described aforesaid, are completely concealed. At no place on these pencils, except as aforesaid, nor on the boxes in which they are packed for shipment to jobbers or retailers, is the fact disclosed that any part of such pencils is of foreign origin. Respondents have furthermore affixed clips to certain brands of their mechanical pencils, containing Japanese mechanisms, on which were stamped or imprinted the words "Windsor USA"; said pencils being then usually shipped in sets with fountain pens in cartons plainly marked "Windsor Pen Corporation, New York, N. Y.". The use of said inscription "Windsor USA" was discontinued by respondents as of January 1, 1951, since which date such imprint has been the single word "Windsor."

PAR. 5. By virtue of the established custom of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of their country of origin in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or in substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There is now and has been among the members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The aforesaid mechanical pencils have in some cases been boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by the respondents at prices ranging from \$2.80 to \$5.00 per dozen, and together with other articles, as high as \$12.00 per dozen. Respondents have furnished on request of their jobbers and dealers price tags or stickers, to be used on said sets, of various denominations—\$3.50, \$6.50, \$7.50, \$10.00, \$17.20 and \$22.50, which are greatly in excess of and disproportionate to the customary or usual selling prices for said articles. Said pen and pencil sets have rarely if ever sold to the purchasing public for the prices indicated by the labels thus supplied. This practice was discontinued by the respondents on February 1, 1951, and since then no price tags or stickers of any denomination have been furnished by them to their jobbers and dealers.

PAR. 7. Such practice of respondents in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions or movements of which are of foreign origin, without imprint, label or conspicuous mark on the pencils, or on the individual cartons in which they are packed, to indicate to purchasers that said mechanisms, ac-

Order

48 F. T. C.

tions or movements are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that the same are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief.

The practice of respondents in affixing metal pocket clips, imprinted with the letters "USA," to said mechanical pencils, so equipped with Japanese mechanisms, actions or movements, has had the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that the said pencils are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief.

Respondents' further practice of supplying their distributors and dealers with price tags or stickers containing highly exaggerated, disproportionate and fictitious figures has provided said dealers with a means or instrumentality for grossly deceiving the buying public as to the usual and customary prices of said pen and pencil sets, and to induce the purchase thereof in reliance upon such misrepresentation.

## CONCLUSION

The aforesaid acts and practices of respondents 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

*It is ordered,* That respondent Windsor Pen Corporation, a corporation, and its officers, and respondent Morris Fink, individually and as an officer thereof, and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mechanical pencils or fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling mechanical pencils, the mechanisms, actions or movements of which are of foreign origin, without affirmatively and clearly disclosing on or in immediate connection with said pencils, the country of origin of such mechanisms, actions or movements.
2. Representing, directly or by implication, that mechanical pencils containing mechanisms, actions or movements of foreign origin, are wholly of domestic origin.

811

## Order

3. Supplying customers or purchasers of fountain pens or mechanical pencils with price tags or stickers therefor bearing amounts which are in excess of the prices at which such articles are usually or customarily sold to the purchasing public; or otherwise representing that such articles are sold for amounts in excess of their usual and customary selling prices to the purchasing public.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to the respondent Sady Fink.

*It is further ordered,* That respondents Windsor Pen Corporation and Morris Fink 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.

Commissioner Mason not participating.

IN THE MATTER OF  
EUGENE F. AGEE TRADING AS COMMERCIAL EXTENSION SCHOOL OF COMMERCE

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

*Docket 5904. Complaint, July 9, 1951—Decision, Feb. 19, 1952*

Where an individual engaged in the competitive operation of a business school and in the sale of residence and correspondence courses of study through sales agents who called upon prospective purchasers, and whom he supplied with copies of "A Directory of Private Business Schools in the United States", published by the "National Association and Council of Business Schools", which purported to be a handbook for vocational advisors and guidance officers throughout the United States, was distributed to members of the association and other interested parties, and included a "Directory of Approved Schools", names of some of which, in the 1949 and 1950 editions, were followed by an asterisk with footnote reference reading "Temporary approval to December 31, 1949" or "1950"—

- (a) Represented in a substantial number of instances to prospective students through his said sales agents that "such temporary approval" was due to one or more of the facts (1) that the quality of the work done was not up to standard or was inferior to other approved schools; (2) that such schools would lose accreditation unless there was a complete change in the faculty by a given date; (3) that prospective employers refused to employ any graduate from any school whose rating was unfavorable as indicated by such asterisk, and that students attending competitive schools thus designated might impair their chances of employment; and (4) that the standing of such schools was questionable and that their officers had been involved in "crooked" or "shady" deals;

The facts being that the schools thus designated were regarded by the association as having failed to compute correctly the annual dues payable to it; and the so-called temporary approval had no relation whatever to their reputation, financial standing, accreditation, quality of work or the reputation of their faculty;

- (b) Falsely represented that said "Directory of Private Business Schools" was an official publication of the United States Government;
- (c) Falsely represented that certain named high school principals recommended said school to their graduates; and
- (d) Represented that the character or nature of the student body of a certain competing school was undesirable in several respects;

The facts being that while some competitive schools did admit to their classes students of all races and ages, such fact did not render them undesirable; and

- (e) Falsely represented that competing schools were undesirable choices for the reason that they might soon have to close down due to frequent changes in ownership and to financial difficulties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its competitors,