

Complaint

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IN THE MATTER OF

UNION PENCIL COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8216. Complaint, Dec. 8, 1960—Decision, Nov. 7, 1961*

Consent order requiring three affiliated Yonkers, N.Y., concerns to cease representing falsely in form letters mailed their customers that the addressee could purchase their pens and pencils at a saving because, in filling an order for a firm with a name similar to his, they had pulled the wrong card from a file and had in error imprinted pencils with his name and address; and that they were the manufacturers of Micro-Line Ball Pens.

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 the Union Pencil Company, Inc., a corporation, Unipenco Inc., a corporation and York Pen Corp., a corporation and Max Grossman, Arthur Grossman and Murray Rubinfeld, individually and as officers of said corporations, 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. Respondent Union Pencil Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Respondent Unipenco, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Respondent York Pen Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Individual respondents Max Grossman, Arthur Grossman and Murray Rubinfeld are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of general

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merchandise by direct mail to business concerns located throughout the United States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their product, it has been and is the practice of the respondents to mail letters to prospective customers located in various States of the United States. Typical, but not all inclusive, of the statements contained in said letters are the following:

UNIPECO, division of the union pencil company inc. . . .

June 7, 1960

Dear Sir:

Recently, we received an order for pencils from a firm similar in name to yours.

In error, we pulled your name and address from our inactive file and ran an order of 576 printed wood pencils.

Should you be able to use these pencils we will bill you at the price of .04 each and include a free Timex watch for your cooperation.

We repeat, this error was entirely ours and you are under no obligation to buy. However, if you wish us to ship the pencils, indicate your OK below and we will comply.

Very truly yours

P.S. The pencils are white and have your name and address imprinted in blue on 2 lines.

* * *

York Manufacturers of the Micro-Line Ball Pens Pen Corp.

June 3, 1960

Re: Your lot of PA-1 pens;

100 @ .29 each;

printed 5/27/60

Recently, we received an order from a firm similar in name to yours.

In error, we pulled your name and address from our inactive file and ran an order of 100 printed Ventura Micro-Line pens.

Should you be able to use these pens, we will bill you at the price of .29 each and include a free Timex watch for your cooperation.

We repeat—this error was entirely ours and you are under no obligation to buy. However, if you wish us to ship the above pens, indicate your OK below and we will comply.

Very truly yours

P.S. The pens are black with gold color trim and have your name and address imprinted in gold on 3 lines.

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PAR. 5. Through and by means of the aforesaid statements and others of similar import and meaning not specifically set forth herein, respondents have represented directly or by implication that:

1. Orders for pencils or pens had been received from firms with names similar to the addresses of said letters.
2. The addressees names and addresses were pulled from an inactive file and were imprinted on 576 wood pencils or 100 pens.
3. Because of the error in names the price of .04 per pencil and .29 per pen represents a saving from respondents' regular price.
4. Respondent York Pen Corp. is the manufacturer of Micro-Line Ball Pens.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. No orders were received from firms with names similar to those to whom the letters were addressed.
2. The names of the addressees of said letters were not pulled from an inactive or any other file.
3. No pencils or pens were imprinted with the names and addresses of addressees until orders were received from the prospective customers.
4. The price of .04 per pencil or .29 per pen does not represent a saving due to the respondents' error from the regular selling price of the respondents.
5. Respondent, York Pen Corp., is not the manufacturer of Micro-Line Ball pens or any other pens, but only imprints the name and address of the customer on a pen, made by a manufacturer, other than the respondents.

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of imprinted pencils and merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Anthony J. Kennedy, Jr., for the Commission.

Mr. George I. Cohen, New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 8, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with offering for sale, sale and distribution of general merchandise. On August 29, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Union Pencil Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of

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the State of New York, with its office and principal place of business located at 362 South Broadway, in the City of Yonkers, State of New York.

Respondent Unipeco, 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 362 South Broadway, in the City of Yonkers, State of New York.

Respondent York Pen Corp., 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 362 South Broadway, in the City of Yonkers, State of New York.

Individual respondents, Max Grossman, Arthur Grossman and Murray Rubinfeld are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as the corporate respondents.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered. That respondents, Union Pencil Company, Inc., a corporation, Unipeco, Inc., a corporation, and York Pen Corp., a corporation, their offices, and Max Grossman, Arthur Grossman and Murray Rubinfeld, individually and as officers of the said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of imprinted pencils, pens, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That respondents have received orders for imprinted pencils or pens from firms with names similar to the names of prospective customers when in fact no such orders have been received by respondents.

(b) That because of error, or for any other reason, the prospective customers' names and addresses have been imprinted on pencils or pens when in fact no such imprinting was made prior to the solicitation of orders from the prospective customers.

(c) That any saving is afforded in the purchase of merchandise from respondents' usual and customary selling price, unless the price at which the merchandise is offered constitutes a reduction from the

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price at which respondents usually and customarily sell the merchandise in the recent regular course of business.

(d) That respondent York Pen Corp. is the manufacturer of the Micro-Line Ball Pens or that respondents, or any of them, manufacture any other product unless they own and operate or directly and absolutely control the plant where such product is manufactured.

2. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of their merchandise is reduced from the price at which it is usually and customarily sold by respondents in the recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 7th day of November, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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 the order to cease and desist.
