

IN THE MATTER OF
S. W. PIKE, SEEDSMAN, INC.

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

Docket 2086. Complaint, Jan. 19, 1933—Decision, Sept. 26, 1933

Where a corporation engaged in the sale of seeds of various kinds, through advertisements in newspapers and magazines of general circulation, and through such agencies as post cards, catalogs, leaflets, and other printed and written matter distributed through the mail,

- (a) Represented that it would send free of charge two dozen Giant Darwin Tulips, five packages of assorted flower seed, one package of new Everblooming Easter Lily and its catalog, for five names of friends who love flowers and 20 cents to cover packing and postage, and that if accepted within ten days it would send free of charge a beautiful hardy Chinese Regal Lily bulb, and sent post-card communications or advertisements advising the addressee that "As your friend informed us you are interested in flowers, we have a *free offer* of 2 dozen Giant Darwin Tulips together with our catalog to send you", and offered also to "send post paid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New 'Everblooming Easter Lily' which will blossom most all summer if planted now (also a wonderful house plant) all for only five names of friends who love flowers and 20 cents to cover packing and postage", with the further offer to include, in event of acceptance within ten days, "Free, a beautiful hardy, Chinese Regal Lily bulb", along with the assertion "This opportunity may never come to you again";

The facts being no Giant Darwin Tulips were sent, pursuant to said first advertisement, and the so-called "Free offer" was predicated upon an order from its catalog, of \$3 or more, neither said tulips nor lily bulb were included without charge, but cost thereof was included in that of the other items, and orders were received and accepted irrespective of any ten-day limitation, which it included to indicate as unusual, its usual and characteristic method of competition; and

- (b) Made such pretended free offers in catalogs and other advertising distributed among purchasers and prospective purchasers as "we will send 40 large pkts. assorted vegetable and flower seed; one-half dozen fine Everblooming Tuberoses and 25 of our best named Gladioli in assorted colors, measuring 3½ to 5 inches circumference, all for only 98 cents"—together with offer to include, in event of acceptance within ten days, "free a large blooming size Regal Lily that sells for 50 cents—don't ask how we are able to do this, but take advantage of it now, for this offer may never be made again", along with the assertion that "In appreciation of your order, we give these wonderful *free* offers * * * taken from our select stock", and "being large growers we are in a position to give these wonderful offers to you", and made it its practice to distribute with its catalog a so-called free offer of two dozen large Giant Darwin Tulips;

The facts being that shipment of the tulips was conditioned upon the making up of an order of \$3 or more hereinabove set forth, and cost thereof and of the Regal Lily bulbs was included in prices charged for other items, so that it derived a compensation from any and all transactions resulting from its so-called "free offers", or any of them;

With tendency and capacity to mislead and deceive the public into believing said tulips and other things would be received without charge in return for names of five friends and 20 cents to cover packing and postage, and with effect of misleading and deceiving the public into acceptance of such so-called free offer, and purchase of products catalogued by it, in accordance with the terms thereof, in the belief that it was offering its products at reasonable prices, while furnishing purchasers those things described in its so-called free offers, without charge to the purchaser or compensation or return to it, and of diverting trade to itself from competitors offering and selling their various products, truthfully advertised and described, and with capacity and tendency so to mislead, deceive and divert:

Held, That such practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation, engaged in the sale of seeds of various kinds, and with principal place of business at St. Charles, Ill., with advertising falsely or misleadingly in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, advertises "free" offers of certain seeds and bulbs, the facts being that the things thus advertised free, are either not sent, or are predicated upon the making of certain other purchases, at a price sufficiently high to compensate respondent for the entire transaction, so that such so-called free articles are not in fact included with other things ordered by the purchaser, without cost to such purchaser; with effect of misleading and deceiving the public and of diverting trade to respondent from competitors truthfully advertising and describing their various products, and with capacity and tendency so to mislead, deceive and divert; all to the prejudice of the public and competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued, and on January 21, 1933, caused duly to be served on S. W. Pike, Seedsman, Inc., hereinafter designated respondent, its complaint, charging that said respondent had

¹ The various allegations of the complaint, as set forth in detail therein, are found and set forth substantially verbatim in the findings, infra.

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been and then was using unfair methods of competition in interstate commerce in violation of the provisions of said act, fixing February 24, 1933, at the office of the Federal Trade Commission in Washington, D.C., as the time and place, for appearance or answer, and containing a copy of the Rules of Practice of the Commission with respect to answer or failure to answer, the pertinent part thereof being as follows, to wit:

Failure of the respondent to appear or to file answer within the time as above provided for (referring to the time fixed for answer, not less than thirty days from the service of the complaint), shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true, and to waive hearings on the charges set forth in the complaint.

The respondent having failed either to appear or to answer, or to take any other action in this proceeding, or in relation thereto, at or within the time fixed by the complaint, or at any other time, and this proceeding having come on to be heard upon the complaint, in accordance with the aforesaid Rules of Practice, and the Commission having considered the record and being fully advised in the premises, finds all the allegations of the complaint to be true and that the respondent has waived hearings on the charges set forth in the complaint and the Commission files this its report in writing stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, S. W. Pike, Seedsman, Inc., is now, and has been for several years last past a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at St. Charles in said State. It has been, during said period, and now is, engaged in the business of offering for sale and selling seeds of various kinds in commerce among and between the various States of the United States, and when sold in pursuance of orders therefor received by mail, it has caused, and now causes such product or products to be transported from its said place of business at St. Charles, in the State of Illinois, to purchasers located in the various States of the United States other than the State of Illinois.

In the course and conduct of such business respondent has been, and is in competition with individuals, partnerships, and corporations offering for sale and selling seeds in interstate commerce.

PAR. 2. It has been and is the practice of respondent to offer for sale and sell its seeds by means of advertisements in newspapers and magazines of general circulation in and through the various States of the United States, and also through the agency or medium of post cards, catalogs, leaflets, and other printed and written matter dis-

tributed through the mails in and through the various States of the United States.

As inducement to the purchase of its products respondent has, on such post cards distributed as aforesaid, represented that it would send free of charge two dozen Giant Darwin Tulips, five packages of assorted flower seed, one package of New Everblooming Easter Lily and its catalog for five names of friends who love flowers and 20 cents to cover packing and postage, and that if accepted within ten days it would send free of charge a beautiful hardy Chinese Regal Lily bulb.

In truth and in fact it has not been and is not the practice of respondent to furnish free of charge, nor has it furnished free of charge, two dozen Giant Darwin Tulips or any Giant Darwin Tulips to persons who, in compliance with the terms and conditions of respondent's offer on its said post cards, have transmitted to respondent the required names of flower lovers and the 20 cents to cover packing and postage. It has been and is the practice of respondent to send such persons five packages of assorted flower seed, one package of New Everblooming Easter Lily, and, when accepted within ten days, to send a Chinese Regal Lily bulb, together with the catalog and a leaflet containing language purporting to be a free offer of two dozen Giant Darwin Tulips.

As further inducement to the purchase of its products respondent has, in advertisements including such post cards, catalogs, leaflets, and other printed and written matter, distributed in and through the various States of the United States as aforesaid, made false representations and statements to the effect that it was and is offering to the public certain of its products free of charge.

The following is typical of the false and misleading representations of respondent in respect to one of its so-called free offers on post cards:

As your friend informed us you are interested in flowers, we have a **FREE OFFER** of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include **FREE** a beautiful hardy Chinese Regal Lily bulb. This opportunity may never come to you again.

The following is typical of the false representation of respondent in respect to its so-called free offer which has appeared in catalogs distributed by it among purchasers and prospective purchasers in the various States of the United States:

To new customers: Just to prove to you the wonderful quality of "Pike's Can't Be Beat" seeds and bulbs, we will send 40 large pkts. assorted Vegetable

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and Flower seed; ½ dozen fine Everblooming Tuberose and 25 of our best named Gladioli in assorted colors, measuring 3½ to 5 inches circum., all for only 98¢—If this wonderful offer is accepted within 10 days, will include FREE a large blooming size Regal Lily that sells for 50¢—Don't ask how we are able to do this, but take advantage of it now, for this offer may never be made again.

In appreciation of your order, we give these wonderful FREE offers which are taken from our select stock. Being large growers we are in a position to give these wonderful offers to you. We doubt if any other concern in the country will duplicate these offers which are good for 10 days from the time you receive this catalog. Be sure to stipulate your choice on your order sent in.

It has been and is the practice of respondent to distribute with its catalogs, among purchasers and prospective purchasers in the various States of the United States, a leaflet on which there appear near the top thereof in large and conspicuous letters the words "free offer." Below such words in conspicuous letters, but smaller than those in which the words "free offer" are expressed, appear the words "2 Dozen Large Giant Flowering Darwin Tulips", and below such language is the following:

On every order made up from our catalog amounting to \$3 or more we will send two dozen large Giant Darwin Tulips in assorted colors. Our selection of at least 12 kinds, absolutely free, if free offer is returned within 10 days.

In truth and in fact the products so offered to the public as free by respondent were not and are not delivered, furnished, or supplied free of charge, or without any compensation or return to the respondent, and the cost of such products purported and purporting to be given free of charge has been, was, and is included by respondent in the price purchasers have been and are required to pay for products purchased from respondent in accordance with the terms of its various so-called free offers.

The products of respondent described as Chinese Regal Lily bulbs, offered free if the terms of such offer are accepted or fulfilled within ten days, have not been and are not furnished free of charge, but on the contrary respondent has been enabled and is enabled to derive a compensation out of or from any and all transactions resulting from its various free offers, or any of them.

The various offers have not been special or unusual but have been and are the customary methods employed by the respondent in the regular course of its business, and its restriction of certain of its offers to a period of 10 days has been and is employed by respondent in order to indicate as unusual a practice which, in fact, has been and is its usual and characteristic method of competition, and it has been and is the practice of respondent to disregard entirely the

10-day limitation expressed in its advertisements, and to accept and fill orders received by it from purchasers and prospective purchasers, whether or not they have been accepted within 10 days.

PAR. 3. The language used by respondent on post cards distributed by it among purchasers and prospective purchasers in the various States of the United States, to wit:

As your friend informed us you are interested in flowers, we have a free offer of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include FREE a beautiful hardy Chinese Regal Lily bulb. This opportunity may never come to you again.

has had, and has the tendency and capacity to mislead and deceive the public into the belief that in return for five names of friends who love flowers and 20 cents to cover packing and postage, respondent would send two dozen giant Darwin tulips, five packages assorted flower seed for fall or spring planting, one package of New Everblooming Easter Lily and a Chinese Regal Lily bulb, if its offer should be accepted within ten days.

The so-called free offer of respondent distributed among purchasers and prospective purchasers in connection with its catalog, has had and has the capacity and tendency to mislead and deceive and has misled and deceived the public into acceptance of such so-called free offer of respondent, and into the purchase of products listed in its catalog, in accordance with the terms of such so-called free offers, in the belief that respondent has been and is offering for sale and selling its products for reasonable prices and yet furnishing purchasers thereof products described in such free offers without charge to the purchasers and without compensation, return or loss to respondent.

The aforesaid acts and practices of respondent have had the capacity and tendency to divert, and have diverted, trade to respondent from its competitors offering for sale and selling in interstate commerce, their various products truthfully advertised and described.

CONCLUSION

The above and foregoing practices described in paragraph 2 hereof have been and are all to the prejudice of the public and competitors of respondent, and have been and are unfair methods of competition within the meaning of Section 5 of the act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Commission upon the complaint, in accordance with the provisions of its Rules of Practice, therein set forth, and duly served upon respondent, and the Commission having made its report in writing stating its findings as to the facts and its conclusion drawn therefrom that respondent, S. W. Pike, Seedsman, Inc., a corporation, has been and is violating the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That respondent, S. W. Pike, Seedsman, Inc., a corporation, its officers, agents and employees, in connection with offering for sale or selling its products in interstate commerce, cease and desist from representing in postcards, letters, circulars or otherwise as follows:

(1) As your friend informed us you are interested in flowers, we have a *free offer* of 2 doz. Giant Darwin Tulips together with our catalog to send you. Will also send postpaid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New "Everblooming Easter Lily" which will blossom most all summer if planted now (also a wonderful house plant) all for only 5 names of friends who love flowers & 20¢ to cover packing & postage. If accepted within 10 days, will include *free* a beautiful hardy Chinese Regal Lily Bulb. This opportunity may never come to you again,

and from making representations of similar tenor or import unless and until each and every article of merchandise represented as being offered purchasers is sent them in accordance with such representations.

(2) That any of its products are offered free to the purchaser of other products when the value of the former is included in the price of the latter.

It is further ordered, That respondent file with the Commission within 60 days from and after service of this order, a report in writing setting forth in detail the manner and form of its compliance with the order to cease and desist.

Complaint

IN THE MATTER OF

CARMAN-ROBERTS COMPANY, INC.

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

Docket 2113. Complaint, Aug. 17, 1933—Order, Oct. 9, 1933

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or offer in interstate commerce of alkalies, detergents or cleansers, to cease and desist from substituting or passing off trisodium phosphate as and for monosodium phosphate, to purchasers or prospective purchasers thereof.

Mr. PGad B. Morehouse for the Commission.

Franc & Wright, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Carman-Roberts Co., Inc., a corporation, hereinafter referred to as respondent, has been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Carman-Roberts Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the city of Pittsburgh, State of Pennsylvania. It was originally incorporated in the year 1922 as "Laundry Supply Company", and adopted its present corporate name November 5, 1929. For more than two years last past it has been engaged in the sale, both at wholesale and retail, of alkalies, and detergents or cleaners under various trade names, mixed and compounded by it and consisting of such ingredients as caustic soda, soda ash, trisodium phosphate and sodium bicarbonate. When sold, respondent causes said products and compounds to be shipped in kegs or barrels from its principal place of business in Pennsylvania in, through and to various other States of the United States for delivery to the purchasers thereof. In the course and conduct of its business as aforesaid, respondent is and has been in direct and active competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate