

Complaint

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## IN THE MATTER OF

G. H. SOEFFING AND E. H. EISLER, TRADING AS JOHN ALDEN COMPANY AND L. M. STONE, MGR.; AND VICKERY & HILL PUBLISHING CO.

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

*Docket 2364. Complaint, Apr. 13, 1935—Order, Nov. 30, 1935*

Where a firm, engaged in the business of operating a magazine subscription agency to solicit subscriptions, and conducting, pursuant to said purpose, and under the name of an office employee as "Mgr.", a so-called "Auto Boosters Club" or plan or scheme, which had for its purpose the procuring of subscription solicitors for the periodical in question, and which involved the giving of prizes to such solicitors on the basis of specified voting credits for subscriptions secured, in addition to the payment thereto of commissions based on subscriptions received, and acting under a contract with an individual, with whom periodical publisher concerned had theretofore separately contracted for subscription promotion, and in which later contract said publisher had had no part—

Represented, in puzzle prize advertisements directed to securing persons to solicit subscriptions for offer and sale in interstate commerce of said publisher's periodical, that mere solution of problem or puzzle entitled one solving it to a prize consisting of \$1500 in cash or choice of a Ford, Plymouth or Chevrolet automobile, that plan cost "nothing to try"—"send no money"—"\$750 cash" would be paid to the winner of first prize for being prompt, and that one must "act at once" and "rush answers" in order to qualify for the "promptness prize";

The facts being that said statements were false and fictitious, and purpose to secure solicitors for sale of magazine in question became known to contestants only after they had submitted solutions which did not entitle anyone to any prize, and no prize or other thing of value was paid by reason of any solution, or \$750 in cash for being prompt or for any other reason in connection with the solution of the puzzle:

*Held*, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

*Mr. P. C. Kolinski* for the Commission.

*Mr. John E. Nelson*, of Augusta, Me., for Vickery & Hill Publishing Co.

## COMPLAINT

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, having reason to believe that G. H. Soeffing and E. H. Eisler, trading as John Alden Company and also as L. M. Stone, Mgr., and Vickery & Hill Publishing Company, a corporation, hereinafter called respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, it hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents G. H. Soeffing and E. H. Eisler, are now, and for several years last past have been copartners trading under the name and style of John Alden Company and also as L. M. Stone, Mgr., with their principal office and place of business in the city of Chicago, State of Illinois, engaged in the business of operating a magazine subscription agency for the purpose of soliciting subscriptions for magazines circulated in interstate commerce, including the magazine "Good Stories", published by respondent, Vickery & Hill Publishing Company. In the course and conduct of said business, respondents procure the services of agents, salesmen and representatives to be employed in the business of soliciting subscriptions for magazines including the magazine "Good Stories", and are in substantial competition with other individuals, partnerships and corporations engaged in commerce in the similar business of operating magazine subscription agencies.

Respondent Vickery & Hill Publishing Company is now and for several years last past has been, a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business in the city of Augusta in said State, engaged in the business of publishing and circulating in interstate commerce a magazine known as "Good Stories". Respondent causes said publication to be transported from its place of business in the city of Augusta, State of Maine, to subscribers and purchasers located in various other States and territories of the United States. In the course and conduct of its said business, respondent is in substantial competition with other individuals, corporations and partnerships likewise engaged in the publication, sale and transportation of magazines and periodicals in interstate commerce between and among the various States of the United States.

PAR. 2. It has been and is the practice of the respondents, in the course and conduct of their respective businesses described in paragraph 1 hereof, to conduct a so-called "Auto Boosters Club" for the purpose of procuring subscription solicitors and promoting the sale and circulation of "Good Stories" magazine in interstate commerce.

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The particular feature of such Auto Boosters Club has been and is a puzzle-prize form of advertising, the advertisements of which have been caused to appear in various magazines and newspapers of general circulation in the United States under the name of "L. M. Stone, Mgr.," whom respondents describe or designate as manager of the Auto Boosters Club. L. M. Stone is a fictitious person.

Said Auto Boosters Club designates an advertising and promotion campaign operated for the purpose of procuring subscriptions to the magazine "Good Stories". Prospective subscription solicitors are recruited from the readers of aforesaid puzzle-prize advertisements. A system of voting credits is devised as follows:

|                                         |               |
|-----------------------------------------|---------------|
| Each 1-year subscription at 25¢-----    | 250 credits   |
| Each 2-year subscription at 50¢-----    | 500 credits   |
| Each 3-year subscription at 75¢-----    | 750 credits   |
| Each 4-year subscription at \$1.00----- | 1,000 credits |

In addition the subscription solicitors are paid a 10% commission on all subscription payments received by them. A definite contest period is fixed, and at the conclusion thereof, the votes or "credits" received by the contestants in said subscription-gathering contest are tallied and certain prizes awarded to the announced winners.

In such advertisements, respondents have made and continue to make statements and representations in reference to their prize contests, to the following effect, to wit:

That the mere solution of the problem or puzzle in the advertisement of respondents qualifies or entitles the one solving it to receive a prize consisting of \$1,500.00 in cash or choice of a Ford V8, Plymouth, or Chevrolet automobile;

That the contest does not require the sending of money—that "It costs nothing to try—you may win—who knows?"—"Send no money—answer right away—no money required"—"\$750.00 cash will be paid to the winner of first prize for being prompt"—"Not one nickel of your money is needed to win";

That one must "act at once" and "rush answers" in order to qualify for the "promptness prize".

In truth and in fact:

(a) The mere solution of the problem or puzzle in the advertisement of respondents does not qualify or entitle the one solving it to receive a prize consisting of \$1,500.00 in cash or choice of a Ford V8, Plymouth or a Chevrolet automobile, and respondents do not and have not, for the mere solution of the problem or puzzle in the advertisement, awarded a prize consisting of \$1,500.00 in cash or the choice of a Ford V8, Plymouth or Chevrolet automobile, or any other thing of value;

(b) The contest does require the sending of money by persons entering such contest;

(c) \$750.00 cash is not paid and has not been paid to any person entering such contest for being prompt or for any other reason in conjunction with the solution of the puzzle;

(d) The only means by which a person entering such contest receives any amount of money or any reward is by way of commissions made by such contestant in securing subscriptions for the respondents to the aforesaid magazine called "Good Stories."

In truth and in fact the use of the representations aforesaid is done by respondents for the purpose of securing solicitors for the sale of the aforesaid magazine "Good Stories", which fact is not disclosed by the respondents in and by the aforesaid advertisements and which fact becomes known to contestants only after they have submitted to the respondents their solutions of the problems or puzzles contained in such advertisements.

PAR. 3. The practices of respondents described in paragraph 2 hereof have had, and now have the capacity and tendency to mislead and deceive the public interested in bona fide puzzle contests, into participation in the contest conducted by respondents, in the belief that if the reader correctly solved the puzzle, he would receive the prizes offered in said advertisements; and also induce some members of the reading public to become subscription solicitors and subscribers in furtherance of respondents purposes.

Such practices of respondents have also had, and now have, the capacity and tendency to divert trade to them from competitors who have been and are now publishing, circulating and procuring subscriptions to magazines in interstate commerce by fair and truthful representations and methods. Thereby substantial injury is done to substantial competition in interstate commerce.

PAR. 4. The above acts and things done by respondents are all to the injury and prejudice of the public and competitors of respondents in interstate commerce, within the meaning of Section 5 of an 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.

#### 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, on April 13, 1935, issued and served its complaint in this proceeding upon respondents G. H. Soeffing and E. H. Eisler, trading as John Alden Company and also as L. M. Stone, Mgr., and Vickery & Hill Publishing Company, a corporation,

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charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto (respondent Vickery & Hill Publishing Co., a corporation, filing no answer but appearing by John E. Nelson its attorney), testimony and evidence, in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by John E. Nelson, attorney for respondent Vickery & Hill Publishing Co., and by respondents G. H. Soeffing and E. H. Eisler in their own behalf; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being 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. Respondents G. H. Soeffing and E. H. Eisler, are now, and for several years last past have been copartners trading under the name and style of John Alden Company and also as L. M. Stone, Mgr., with their principal office and place of business in the city of Chicago, State of Illinois, engaged in the business of operating a magazine subscription agency for the purpose of soliciting subscriptions for magazines circulated in interstate commerce, including the magazine "Good Stories", published by respondent, Vickery & Hill Publishing Company. In the course and conduct of said business, respondents procure the services of agents, salesmen and representatives to be employed in the business of soliciting subscriptions for magazines including the magazine "Good Stories", and are in substantial competition with other individuals, partnerships and corporations engaged in commerce in the similar business of operating magazine subscription agencies.

Respondent Vickery & Hill Publishing Company is now and for several years last past has been a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business in the city of Augusta in said State, engaged in the business of publishing and circulating in interstate commerce a magazine known as "Good Stories". Respondent causes said publication to be transported from its place of business in the city of

Augusta, State of Maine, to subscribers and purchasers located in various other States and territories of the United States. In the course and conduct of its said business, respondent is in substantial competition with other individuals, corporations and partnerships likewise engaged in the publication, sale and transportation of magazines and periodicals in interstate commerce between and among the various States of the United States.

PAR. 2. It has been and is the practice of the respondents, in the course and conduct of their respective businesses described in paragraph 1 hereof, to conduct a so-called "Auto Boosters Club" for the purpose of procuring subscription solicitors and promoting the sale and circulation of "Good Stories" magazine in interstate commerce.

The particular feature of such Auto Boosters Club has been and is a puzzle-prize form of advertising, the advertisements of which have been caused to appear in various magazines and newspapers of general circulation in the United States under the name of "L. M. Stone, Mgr.", whom respondents describe or designate as Manager of the Auto Boosters Club. L. M. Stone is an office employee of respondents G. H. Soeffing and E. H. Eisler.

Said Auto Boosters Club designates an advertising and promotion campaign operated for the purpose of procuring subscriptions to the magazine "Good Stories". Prospective subscription solicitors are recruited from the readers of aforesaid puzzle-prize advertisements. A system of voting credits is devised as follows:

|                                         |              |
|-----------------------------------------|--------------|
| Each 1-year subscription at 25¢.....    | 250 credits  |
| Each 2-year subscription at 50¢.....    | 500 credits  |
| Each 3-year subscription at 75¢.....    | 750 credits  |
| Each 4-year subscription at \$1.00..... | 1000 credits |

In addition the subscription solicitors are paid 25%, 20%, and 10% commissions on all subscription payments received by them. A definite contest period is fixed, and at the conclusion thereof, the votes or "credits" received by the contestants in said subscription-gathering contest are tallied and certain prizes awarded to the announced winners.

In such advertisements, respondents have made and continue to make statements and representations in reference to their prize contests, to the following effect, to wit:

That the mere solution of the problem or puzzle in the advertisement of respondents qualifies or entitles the one solving it to receive a prize consisting of \$1,500.00 in cash or choice of a Ford V8, Plymouth, or Chevrolet automobile;

That the contest does not require the sending of money—that "It costs nothing to try—you may win—who knows?"—"Send no money—answer right away—no money required"—"\$750.00 cash will be paid to the winner

## Findings

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of first prize for being prompt"—"Not one nickel of your money is needed to win";

That one must "act at once" and "rush answers" in order to qualify for the "promptness prize."

PAR. 3. The representations set out in the advertising matter described in the preceding paragraph as to prizes and rewards for solving puzzles advertised by respondents are false and fictitious. Such representations are made for the purpose of securing solicitors for the sale of the aforesaid magazine "Good Stories", which fact becomes known to contestants only after they have submitted to respondents their solutions of the puzzles contained in such advertisements.

In truth and in fact, the mere solution of the problem or puzzle in the advertisement of respondents does not qualify or entitle the one solving it to receive a prize consisting of \$1,500 in cash or choice of a Ford V8, Plymouth, or a Chevrolet automobile, and respondents do not and have not, for the mere solution of the problem or puzzle in the advertisement, awarded a prize consisting of \$1,500 in cash or the choice of a Ford V8, Plymouth, or Chevrolet automobile, or any other thing of value. The contest does require the sending of money by persons entering such contest. \$750 cash is not paid and has not been paid to any person entering such contest for being prompt or for any other reason in conjunction with the solution of the puzzle.

PAR. 4. The only means by which a person entering such contest receives any amount of money or any reward is by way of commissions made by such contestant in securing subscriptions for the respondents to the aforesaid magazine called "Good Stories." Respondents G. H. Soeffing and E. H. Eisler, during the said contest, through the efforts of their subscription gatherers, procured 67,172 subscriptions for "Good Stories" magazine. 3,366 contestants entered the puzzle contest and engaged as subscription gatherers. The sum of \$19,649.73 was paid to respondent Vickery & Hill Publishing Co. in payment for said subscription contracts. The sum of \$7,000 was paid as commissions to compensate the services of the subscription gatherers. One Anna Warzala was determined to be the winner of the contest and entitled to receive the first prize aggregating \$3,110.00.

PAR. 5. Respondent Vickery & Hill Publishing Co. entered into a contract on August 2, 1934, with C. G. Simpson, doing business as Whitlock and Company (not incorporated) of Chicago, Ill., engaging said Simpson for the purpose of procuring subscriptions to the magazine "Good Stories", said contract authorizing C. G. Simpson to perform such services by his own activities or by the activities of such special representatives as he may select. Thereafter on September 6, 1934, said C. G. Simpson entered into a contract with respondents

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G. H. Soeffing and E. H. Eisler as his agents in the procurement of subscriptions to the magazine "Good Stories", which contract contained these provisions:

You are to produce all subscriptions in accordance with all Postal and ABC regulations, which are in effect at this time, or may be put into effect during the term of this agreement.

This agreement may be terminated by Whitlock and Company upon notice in writing if the Post Office Department, or the Federal Trade Commission or any other duly constituted Federal authority having jurisdiction, refuses Vickery and Hill Publishing Company the right to serve the subscriptions produced under this agreement in accordance with their second class mailing privilege.

Respondent Vickery & Hill Publishing Co. had no part in the contract existing between C. G. Simpson and respondents G. H. Soeffing and E. H. Eisler, and had nothing to do with advertising inserted in newspapers and magazines by them. Respondents Vickery & Hill Publishing Co. exercised ordinary care and entered into its contract with C. G. Simpson in the customary course of such business dealing.

## CONCLUSION

The acts and practices of respondents G. H. Soeffing and E. H. Eisler, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and the acts and practices of respondent Vickery & Hill Publishing Co., under the conditions and circumstances described in the foregoing findings, do not constitute unfair methods of competition within the intent and meaning of said act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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".

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*It is ordered*, That respondents G. H. Soeffing and E. H. Eisler, trading as John Alden Company, and L. M. Stone, manager, or trading under any other designation, their officers, agents representatives and employees, in connection with the sale of or offering for sale or distribution in interstate commerce of subscriptions for magazines, cease and desist directly or indirectly, from:

(1) Advertising puzzle contests representing in such advertisements that the mere solution of the puzzle will enable a contestant to win a prize.

(2) Advertising puzzle-prize contests with the representation that the contest does not require the sending of money by contestants.

(3) Advertising puzzle-prize contests accompanied by any representation that the advertised prizes are offered free, without the rendition of sales, solicitation, or subscription gathering services on the part of contestants.

*It is further ordered*, That respondents shall within 60 days after service of a copy 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 and conformed to the order to cease and desist as above set forth by the Commission.

*It is further ordered*, That the complaint against Vickery & Hill Publishing Co. be and the same is hereby dismissed.

## Syllabus

## IN THE MATTER OF

C. S. ALLEN CORPORATION AND CLAUDE S. ALLEN,  
DOING BUSINESS UNDER THE TRADE NAME AND  
STYLE OF LONDON TOFFEE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2459. Complaint, June 26, 1935—Order, Nov. 30, 1935*

Where a corporation, engaged in the manufacture and sale of confectionery products, including one known as "Toffee"—

(a) Set forth on the cellophane or paper containers thereof, and on shipping boxes, and upon its letterheads and billheads sent to dealers, purchasers, customers and prospective customers in the several States, along with other matter, its corporate name, together with words "London, England; Montreal, Canada; Brooklyn, New York", notwithstanding fact it did not own, control or operate manufacturing plants, branches or selling agencies, directly or indirectly, either in London or Montreal; and

(b) Included in the legends displayed respectively upon the containers and shipping boxes, as above set forth, and upon its letterheads and billheads, the words "Famous in London since 1860", or "Famous in England since 1860", and also depicted upon said containers and shipping boxes an English "Beef Eater" uniformed guard and English castle, notwithstanding fact that said confectionery was of domestic manufacture entirely, and was not the English or other foreign-made confectionery product which had for many years enjoyed undisputed popularity, good-will and demand among the consuming public in the United States, by many of whom it was considered superior in quality and other desirable characteristics to the domestic product, and purchased in preference thereto;

With intent, tendency and capacity to mislead and deceive a substantial portion of the purchasing public and trade and induce their purchase of said product in the belief that said representations and statements as to foreign factories, branches or selling agencies and foreign source of product were true; and

Where an individual, president of said corporation and in control thereof by virtue of stock ownership, engaged under the trade name and style of "London Toffee Co.", in sale and distribution of confectionery, including said "Toffee"—

(c) Included upon the cellophane or paper containers thereof, along with the phrase "Manufactured by" and the trade name employed by him as above set forth, words "London, England; Montreal, Canada; Brooklyn, New York", notwithstanding fact that he did not manufacture said product, or own, control or operate manufacturing plants, branches or selling agencies in London, Montreal or Brooklyn, but owned his distributing and selling business in New York only; and

(d) Included in his trade name, employed as above set forth, and in trade name and designation of said product, word "London", and set forth same on individual containers of said product, together with representation of tower of House of Parliament, and displayed upon individual wrappers of