

Syllabus

IN THE MATTER OF
CHICAGO SILK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2551. Complaint, Sept. 13, 1935—Decision, Apr. 27, 1936*

Where a corporation, engaged in the sale of hosiery and lingerie throughout the various States—

Employed in the sale thereof a scheme or plan by which it secured the names and services of persons to act for it in selling its said hosiery through sale of push card chances so arranged that amount of money paid, if any, for chance depended upon particular number selected, and acquisition of two pairs or of one pair of hosiery depended upon correct chance selection from list displayed on each card of various feminine names;

With result that its said hosiery and amount paid therefor, if any, by particular consumer or participant was determined by lot or chance, many purchasers of hosiery and lingerie were attracted by element of chance involved and induced to purchase its merchandise in preference to that of competitors who do not use such methods involving sale of a chance rather than merchandise, and violation of established public policy and unanimous condemnation of competitors who refuse to and refrain from use of such a plan of disposing of their merchandise as not in the public interest, contrary to public policy and good morals, and not in harmony with business ethics or trade morality, and recognized by trade and public as constituting, in effect, a lottery or gambling scheme, and one under which every customer is not treated alike, and under which more people lose than win, and as a detriment to legitimate business; or who so refrain and decline to uphold their reputations and avoid criticism, or because unwilling to lower themselves on moral ground thus to compete; and

With effect of diverting trade and custom to it from competitors who do not use such methods, and with tendency and capacity unfairly to divert and to lessen competition in trade involved and to create a monopoly thereof in it by excluding therefrom actual and potential competitors who do not use said method for some or all of the aforesaid reasons, and to deprive the public of the benefit of free competition in said trade:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. R. L. Kennedy for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that the Chicago Silk Company, a corporation, hereinafter referred to as the respondent, has been 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is 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 located in the city of Chicago, Ill. It is now and for more than one year last past has been engaged in the sale of hosiery and lingerie and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said products when sold to be shipped from its place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois, and others located in various other States of the United States, and the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent is now and has been for more than one year last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of hosiery and lingerie in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent, in soliciting the sale of and selling its said products in interstate commerce, has adopted and pursued and still adopts and pursues the following methods and practices:

Respondent distributes to the public, through the United States mails, in interstate commerce, certain literature, instructions and sales outfits, including paper punch cards, order blanks and advertisements containing illustrations of hosiery and lingerie, together with samples of fabrics, and other premiums or prizes, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the punch card.

In order to obtain addresses of "prospects", said respondent addresses a letter to a woman employee of some concern, offering her a pair of ladies' silk hosiery free on condition that she send to respondent the addresses of ten other women, in different offices. If the

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person addressed complies, the pair of hosiery promised of the size and color designated is sent to her by respondent, and to each of the ten other "prospects" respondent sends said sales literature, including a paper punch card with printed instructions for its operation.

The respondent's punch cards bear feminine names, with a blank space opposite each for writing in the name of the customer; they have 60 small round disks marked "PUSH", below each of which is printed one of the names printed alphabetically elsewhere on the card. Concealed within each disk is a number, which is disclosed when the disk is punched out. The printed instructions on the punch cards read as follows:

10 (or on some cards 14) Numbers
(Red Seal) are FREE (Blue Seal)

(5)-15-20-25

30-35-38-40

45-48-50

(55)-(58)-(60)

Lucky Name under Red Seal receives

TWO Pairs

Ladies' Silk Hosiery

Lucky Name under Blue Seal receives

ONE Pair

Ladies' Silk Hosiery

Notice: If Men's

Hosiery are wanted we

will send 3 pair in

place of each pair of

Ladies'.

PAY ONLY WHAT YOU DRAW—1¢ to 15¢

NO HIGHER

Any number over 15 pays only 15¢

All numbers have Equal Chance

No Credit

First write your name opposite name you

select, then push out with Pencil Point.

Respondent with the punch card, transmits instructions for its operation reading as follows:

SUGGESTIONS FOR USING SALES CARD

Over each girl's name there is a concealed number. This number represents the amount each person pushing out the number is to pay.

The concealed numbers under the small seals range from Numbers 1 to 60 inclusive, but the customer pays only 1¢ to 15¢ per drawing, according to the number drawn, no higher. Any number over 15 pays only 15¢.

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Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out numbers 5-15-20-25-30-35-38-40-45-48-50-55-58-60 are not to pay anything, as these numbers are FREE, but they have equal chance with the other numbers for winning the name shown under the large RED and BLUE SEALS.

After all the numbers have been pushed and collections made, the large RED and BLUE SEALS are pushed out, and the person holding the name corresponding to the one shown on the large RED SEAL is awarded FREE, TWO pairs of Ladies Silk Hose. Also ONE pair of Ladies Silk Hose is awarded to the person pushing out the name corresponding to the one shown under the BLUE SEAL.

The person selling the card receives ABSOLUTELY FREE, their choice of TWO pairs of Ladies Silk Hose for their efforts put forth in selling the card.

When payment is received for all the numbers sold on the card, the amount collected will be \$5.95 for which Cashiers Check or Money Order may be purchased and remitted with the order, or we will ship C. O. D.

We will then ship any FIVE pairs of Ladies Hose of which TWO may be given to the holder of the lucky name shown under the large RED SEAL, and one pair of Ladies Silk Hose to the holder of the lucky name shown under the BLUE SEAL, and the other TWO given to the party that disposes of the card for their efforts.

NOTE: If Men's hose are ordered, we will send 3 pair of Men's Silk Hose instead of Each Pair of Ladies.

Each of said prizes or premiums is allotted to respondent's customers by lot or chance; either ten or fourteen obtain their chances free, and the sums paid by the other customers vary from one cent to fifteen cents, the amount thereof being determined wholly by lot or chance.

PAR. 4. Respondent, in selling its said merchandise, in connection with the aforesaid punch cards, conducts lotteries in the sale of its merchandise, in accordance with the sales plan hereinabove set forth, as a means of inducing the purchase of respondent's merchandise in preference to merchandise offered for sale, and sold, by its competitors.

The sale of respondent's said merchandise to the purchasing public as hereinabove alleged involves a game of chance, or the sale of a chance to procure respondent's merchandise, contrary to the established public policy of the several States of the United States, and the District of Columbia, and of the Government of the United States, and, in many of the States of the United States, is contrary to local criminal statutes. By reason of said fact many competi-

tors of respondent are unwilling to offer for sale or sell their merchandise, so as to involve a game of chance, and such competitors refrain therefrom.

Many purchasers of hosiery and lingerie are attracted by the element of chance involved in respondent's sale method, above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 5. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from said hosiery and lingerie trade all competitors who are unwilling to and do not use the same or equivalent methods; to lessen competition in said hosiery and lingerie trade and to tend to create a monopoly of said hosiery and lingerie trade in respondent and such other distributors of hosiery and lingerie as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said hosiery and lingerie trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said hosiery and lingerie trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of the purchasers of said hosiery and lingerie, or because of any or all of such reasons.

PAR. 6. The aforesaid acts and practices of the respondent are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition, in commerce within the intent and meaning of Section 5 of an Act 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

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Federal Trade Commission on September 15, 1935, issued and served its complaint in this proceeding upon respondent, Chicago Silk Company, a corporation, charging it 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 respondent's answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Richard L. Kennedy, attorney for the Commission, before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by John A. Nash, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint, and in defense thereto and the oral arguments of counsel aforesaid; 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. The respondent, since 1932, has been selling hosiery and lingerie, and was organized, in 1932 or 1933 as an Illinois corporation. Its principal office and place of business is Chicago. It sells its merchandise throughout Illinois and various other States, including the States of Michigan, Pennsylvania, and Massachusetts, but it does not solicit any Chicago business. When sold, the respondent mails or ships its hosiery and lingerie to purchasers wherever located, from its place of business in Chicago.

PAR. 2. Since 1932, the respondent has been selling its merchandise in competition with other business concerns selling similar merchandise, at wholesale and retail, in interstate commerce, in stores; by catalogs circulated throughout the United States; by house to house canvassing; and by various other forms of advertising.

PAR. 3. In the course and conduct of its business, respondent, in soliciting the sale of and selling its said products in interstate commerce, has adopted and pursued and still adopts and pursues the following methods and practices:

Respondent distributes to the public, through the United States mails, in interstate commerce, certain literature, instructions and sales outfits, including paper punch or push cards, order blanks and advertisements containing illustrations of hosiery and lingerie, together

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with samples of fabrics, and other premiums or prizes, and circulars explaining respondent's plan of selling said merchandise, and of allotting it and other articles as premiums or prizes to the operators of the punch or push cards.

In order to obtain addresses of "prospects", the respondent addresses a letter to a woman employee of some concern, offering her a pair of ladies' silk hosiery free on condition that she send to respondent the addresses of ten other women, in different offices. If the person addressed complies, the pair of hosiery promised, of the size and color designated, is sent to her by respondent, and to each of the ten other "prospects" respondent sends said sales literature, including a paper punch or push card with printed instructions for its operation.

The respondent's push or punch cards bear feminine names, with a blank space opposite each for writing in the name of the customer; they have 60 small round disks marked "PUSH", below each of which is printed one of the names printed alphabetically elsewhere on the card. Concealed within each disk is a number, which is disclosed when the disk is punched out. The punch or push cards bear various legends or instructions, among which are the following:

	14 Numbers	
RED	are FREE	BLUE
SEAL	5-15-20-25	SEAL
	30-35-38-40	
	45-48-50	
	55-58-60	
Lucky Name under Red Seal receives		
TWO Pairs		
Ladies' Silk Hosiery		
Lucky Name under Blue Seal receives		
ONE Pair		
Ladies' Silk Hosiery		
Notice: If Men's		
Hosiery are wanted we		
will send 3 pair in place of		
each pair of Ladies'.		
PAY ONLY WHAT YOU DRAW—1¢ to 15¢		
NO HIGHER		
Any number over 15 pays only 15¢		
All numbers have Equal Chance		
No Credit		
First write your name opposite name		
you select, then push out with		
Pencil Point.		

Respondent also uses another sales card, the same in principle, but differing somewhat in detail from the card hereinabove described,

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which offers but ten (10) free numbers, instead of fourteen (14), and provides that the amount to be remitted to respondent, when all the disks on the punch or push cards have been sold and pushed out, is \$6.45 instead of \$5.95. Consequently, one or the other, but not both, is included in each of the respondent's "sales outfits."

Respondent with the punch or push card, transmits a printed slip, labelled "Suggestions for using sales card", but which in effect constitutes directions or instructions for its operation reading as follows:

SUGGESTIONS FOR USING SALES CARD

Over each girl's name there is a concealed number. This number represents the amount each person pushing out the number is to pay.

The concealed numbers under the small seal range from Numbers 1 to 60 inclusive, but the customer pays only 1¢ to 15¢ per drawing, according to the number drawn, no higher. Any number over 15 pays only 15¢.

Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out numbers 5-15-20-25-30-35-40-45-48-50-55-58-60 are not to pay anything, as these numbers are FREE, but they have equal chance with the other numbers for winning the name shown under the larger RED and BLUE SEALS.

After all the numbers have been pushed and collections made, the large RED and BLUE SEALS are pushed out, and the person holding the name corresponding to the one shown on the large RED SEAL is awarded FREE, TWO pairs of Ladies Silk Hose. Also ONE pair of Ladies Silk Hose is awarded to the person pushing out the name corresponding to the one shown under the BLUE SEAL.

The person selling the card receives ABSOLUTELY FREE, their choice of TWO pairs of Ladies' Silk Hose for their efforts put forth in selling the card.

When payment is received for all the numbers sold on the card, the amount collected will be \$5.95 for which Cashier's Check or Money Order may be purchased and remitted with the order, or we will ship C. O. D.

We will then ship any FIVE pairs of Ladies' Hose of which TWO may be given to the holder of the lucky name shown under the large RED SEAL, and one pair of Ladies' Silk Hose to the holder of the lucky name shown under the BLUE SEAL, and the other TWO given to the party that disposes of the card for their efforts. NOTE: If Men's hose are ordered, we will send 3 pair of Men's Silk Hose instead of Each Pair of Ladies'.

Each of said prices or premiums is allotted to respondent's customers by lot or chance; either ten or fourteen obtain their chances free and the sums paid by the other customers vary from one cent to fifteen cents, the amount thereof being determined wholly by lot or chance.

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The respondent's business, while amounting in 1932, to but \$20,000 to \$25,000, increased in 1933, to \$50,000 to \$60,000; in 1934, to about \$150,000, and in October, 1935, it appeared that while the year was not then completed, the respondent's business was better than in 1934. This increasing business resulted from many transactions, involving the use of respondents' push or punch cards, each returning to respondents either \$5.95 or \$6.45, and, in each of these transactions, only two participants obtained respondents' merchandise, as a result of the chances taken by them, although sixty chances to obtain such merchandise were offered by the terms of each card. In each transaction the "operator" of the card received two pairs of hosiery for disposing of it.

PAR. 4. Respondent, in disposing of its hosiery and lingerie, in accordance with the sales plan hereinabove described, which involves the use of the aforesaid push or punch cards, conducts lotteries or games of chance in the disposition of its merchandise. Many purchasers of hosiery and lingerie are attracted by the element of chance involved in respondent's sale method, above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 5. The respondent, by its attorney, during the hearings before the trial examiner, admitted that in substantially all the States there are statutes prohibiting lotteries and games of chance. By the statutes of the United States, lotteries, gift enterprises, and similar schemes are also prohibited. Whether or not the varying language of these statutes specifically cover the respondent's "Sales method", nevertheless the nation wide public interest, as expressed in the statutes condemns the respondent's sales method. The respondent's "sales method" consists of the sale of a chance, rather than the sale of merchandise, and the Commission finds that the sale and distribution of merchandise by lot or chance, is contrary to established public policy.

PAR. 6. Many of respondent's competitors testified that they were unwilling to, and did not, offer for sale, sell, or otherwise dispose of their hosiery and lingerie, or other merchandise, by the use of the punch card or push card method, or any similar method, involving the disposition thereof, free of charge, or at varying prices, depending upon lot or chance. Although the president of the respondent company testified that other dealers, selling hosiery and lingerie, use the push card method of sale, the testimony of no other wit-

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ness, either using, or approving, said method was produced, whereas the record discloses that the respondent's sales method is unanimously condemned by the respondent's competitors, who refuse to adopt and refrain from the use of the push or punch card plan of disposing of their merchandise or other plans, involving the disposition of their merchandise free of charge, or at varying prices depending upon lot or chance.

PAR. 7. Respondent's competitors refuse to adopt the respondent's "sale method" for various reasons, among other reasons, because;

(a) It is not in the public interest, and is contrary to public policy and good morals.

(b) It does not comply with business ethics or morality, recognized by the trade.

(c) It is in effect a lottery.

(d) It does not treat every customer alike.

(e) More people lose than win.

(f) It is a detriment to legitimate business.

(g) It constitutes gambling.

Others of respondent's competitors refrain from the respondent's push or punch card method of sale, to uphold their reputations, to avoid criticism of their business methods and will not lower themselves, on moral grounds, to compete therewith, notwithstanding resulting loss of business.

PAR. 8. Respondent's "sale method" has the tendency and capacity unfairly,

To divert, and does divert to respondent, trade and custom from its competitors who do not use the same or equivalent methods;

To lessen competition in said hosiery and lingerie trade;

To create a monopoly thereof in respondent by excluding therefrom actual and potential competitors who do not use said method for some or all of the reasons hereinabove stated; and to

Deprive the public of the benefit of free competition in said trade.

CONCLUSION

The aforesaid acts and practices of the respondent, Chicago Silk Company, a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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".

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint, and in opposition thereto, briefs filed herein, and oral argument by Richard L. Kennedy, counsel for the Commission, and by John W. Nash, counsel for the respondent, 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."

It is ordered, That the respondent, Chicago Silk Company, a corporation, its officers, representatives, agents, and employees, in connection with the advertising, offering for sale and sale in interstate commerce, or in the District of Columbia, of hosiery or lingerie, cease and desist,

(1) From supplying to, or placing in the hands of others punch cards or push cards, for the purpose of enabling such persons to dispose of, or sell, by the use thereof, hosiery or lingerie;

(2) From mailing, shipping or transporting to members of the public punch cards or push cards, so prepared or printed, as to enable said persons, by the use thereof, to sell or distribute hosiery or lingerie;

(3) From selling or otherwise disposing of hosiery or lingerie by the use of punch cards or push cards; or

(4) In any manner selling, or otherwise disposing of hosiery or lingerie, free of charge, or at varying prices, depending upon lot or chance.

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.

IN THE MATTER OF
NEWARK FELT NOVELTY COMPANY, INC.

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

Docket 2651. Complaint, Dec. 10, 1935—Decision, May 12, 1936

Where a corporation engaged in the manufacture and sale of baseball caps made from felts obtained from old, used, discarded and second-hand hats under a process by which such hats, cleaned and disinfected and dyed to the desired color, and shaped, blocked, refinished and otherwise so treated that there was imparted to the reconditioned felt body the appearance of a new fabric, and equipped with new sweat band and peak or visor, took on the appearance of the necessarily more costly baseball caps made from never worn felts—

Sold said caps without label, marking or designation on or about the same to indicate that they were in fact made from second-hand and used hats which had been renovated, etc., as aforesaid, to jobbers and wholesalers and to retailers by whom said products were respectively resold to retailers and to public without disclosing fact that they had been made from previously worn and thereafter renovated felts, as hereinabove indicated, and under such circumstances as to indicate falsely that they were new;

With result that it was thereby able to sell said caps to retailers, jobbers and wholesalers, and through them to the using public, at substantially lower prices than manufacturers of new products can thus sell caps of the same or similar goods and with capacity and tendency to induce many wholesale and retail dealers and many of the purchasing public to buy its said caps, made as aforesaid, as and for new and unused articles made from new and unused materials, and with effect of unfairly diverting trade to it from competitors, among whom there are those similarly engaged who label, tag or otherwise indicate nature of their said goods as made from felt obtained from used, discarded and second-hand hats, and those engaged in manufacture and sale of baseball caps made from new and unused materials, and with tendency so to divert; to the substantial injury of substantial competition:

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

Mr. George Foulkes for the Commission.

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 the powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Newark Felt