

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1937, TO NOVEMBER 30, 1937

IN THE MATTER OF

WILLIAM F. ALLEN, CHARLES H. WOLF, EDWARD M. MULLEN, AND CHARLES H. CLARK, INDIVIDUALLY, AND DOING BUSINESS AS MILLER, BAIN, BEYER & COMPANY

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

Docket 3095. Complaint, Apr. 3, 1937—Decision, June 2, 1937

Where partners engaged in the purchase of blankets and bedspreads from the manufacturers and in selling same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to purchasing public—

Advertised, through printed cards, circulars, and letters, and sold said products for resale under, a "Club Plan," under which each week, in accordance with weekly drawings, one of a fixed number of members who obligated themselves to some small weekly payment for a specified number of weeks, received, as determined by the name drawn by chance, article of merchandise involved, without further payments or further compliance with original undertaking, from which he was thus absolved, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products in accordance with aforesaid sales plan, and aided and abetted, through aforesaid advertising, in inducing organizations, associations, and the like to purchase and dispose of their said products through lottery, gift enterprise, or game of chance, in violation of public policy, as long recognized in the common law and criminal statutes, and of an established public policy of the United States Government, and in competition with many makers and sellers of blankets and bedspreads, unwilling to offer or sell their said products together with a sales plan or method involving a lottery, game of chance or gift enterprise, and who refrain therefrom, and with many unwilling to adopt and use said or any method involving a game of chance or sale of a chance to win by chance or any other method contrary to public policy;

With result that purchasing public was induced and persuaded to buy their said products in preference to those offered and sold by competitors, by reason of said lottery or game of chance, and of inducing, through said advertisements, circulars, and the like, purchase of their said products by aforesaid organizations and distribution thereof to consuming public

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through such sales plan, and with result that many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads, attracted by said plan or method and element of chance involved in sale thereof, as above set forth, were thereby induced to buy such articles, sold and distributed by them, in preference to like merchandise offered and sold by aforesaid competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to them trade and custom from their said competitors who do not use such or an equivalent practice or method, to exclude from trade in question all competitors who are unwilling to and do not use same as unlawful, to lessen competition therein and tend to create a monopoly in themselves and such other distributors as do use same or equivalent practice, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not use such or an equivalent method:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

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 William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, 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 respondents are individuals doing business as a copartnership under the firm name and style of Miller, Bain, Beyer & Company, with their principal office and place of business located at 1001 Filbert Street, in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been engaged in the business of buying blankets and bedspreads from the manufacturers thereof and in selling the same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Respondents' customers are located at points in the various States of the United States, and respondents cause said

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products when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in the State of Pennsylvania and in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondents in such blankets and bedspreads between and among the States of the United States. In the course and conduct of their said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of similar or like merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents have offered for sale and sold their said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with a sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method as suggested and advertised by respondents, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondents the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondents sell their blankets and bedspreads expose said blankets and bedspreads for sale and sell the same to the purchasing public in accordance with the

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aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' said products in preference to blankets and bedspreads offered for sale and sold by respondents' competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondents aid and abet in inducing organizations, associations and the like to purchase respondents' products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondents in so distributing their advertising material and circulars describing the sales plan above mentioned is to induce organizations, associations and the like to purchase respondents' said products, and the distribution of said advertisements, circulars and the like has the effect of inducing the purchase of respondents' products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above alleged involves a lottery, game of chance, or a gift enterprise.

The use by respondents of said sales plan or method in the sale of their merchandise, and the sale by and through the use thereof and by the aid of said sales plan or method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said sales plan or method has the tendency to unduly hinder competition or create monopoly.

Many persons, firms, and corporations who make and sell blankets and bedspreads in competition with the respondents, as above alleged, are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise as above alleged, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads are attracted by respondents' said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase blankets and bedspreads sold and distributed by respondents in preference to like merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by re-

spondents has the tendency and capacity because of said game of chance to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade and to tend to create a monopoly in respondents and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondents has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. Many of said competitors of respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

PAR. 8. The aforementioned method, acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors, as hereinabove alleged. Said method, acts and practices 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."

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 3, 1937, issued and served its complaint in this proceeding upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 20, 1937, the respondents filed their answer, in which answer they admitted all the material allegations of fact in said complaint to be true, and stated that they waived hearing on the charges set forth in said complaint, and consented that the Commission might, without trial, without the taking of further evidence, and without any other proceeding, make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in the complaint which constitute violations of Section 5 of the said Federal Trade Commission Act.

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Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the same and being now fully advised in the premises, finds 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 respondents are individuals doing business as a copartnership under the firm name and style of Miller, Bain, Beyer & Company, with their principal office and place of business located at 1001 Filbert Street, in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof and in selling the same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Respondents' customers are located at points in the various States of the United States, and respondents cause said products when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in the State of Pennsylvania and in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondents in such blankets and bedspreads between and among the States of the United States. In the course and conduct of their said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of similar or like merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents have offered for sale and sold their said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with a sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method, as suggested and advertised by respondents, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondents the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondents sell their blankets and bedspreads expose said blankets and bedspreads for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' said products in preference to blankets and bedspreads offered for sale and sold by respondents' competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondents aid and abet in inducing organizations, associations and the like to purchase respondents' products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondents in so distributing their advertising material and circulars describing the sales plan above mentioned is to induce organizations, associations and the like to purchase respondents' said products, and the distribution of said advertisements, circulars and the like has the effect of inducing the purchase of respondents' products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above found involves a lottery, game of chance, or a gift enterprise. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale by and through the use thereof and by the aid of said sales plan or method, is a prac-

tice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said sales plan or method has the tendency to unduly hinder competition or create monopoly. Many persons, firms and corporations who make and sell blankets and bedspreads in competition with the respondents, as above found, are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise, as above found, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies and ultimate purchasers of blankets and bedspreads are attracted by respondents' said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase blankets and bedspreads sold and distributed by respondents in preference to like merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade and to tend to create a monopoly in respondents and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondents has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. Many of said competitors of respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondents, William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & Company, are to the prejudice of

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the public and of respondents' 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 TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on April 3, 1937, and the answer of the respondents filed May 20, 1937, in which answer the respondents state that they desire to waive hearing on the charges set forth in said complaint and that for the sole purpose of avoiding the trouble and expense incident to further continuance of this proceeding they refrain from contesting the proceeding and admit that all the material allegations of fact in said complaint are true, but 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," and not within the intent and meaning of any other law of the United States, and further state that such answer does not constitute an admission of any conclusions of law and does not constitute an admission of fact for any other purpose than for the disposition of this proceeding and is not to be used against them in any other proceeding, suit or action, and in which answer respondents consent that the Commission may, without trial, without the taking of further evidence, and without any other proceeding, make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in said complaint which constitute violations of Section 5 of the said Federal Trade Commission Act; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of said Federal Trade Commission Act.

It is ordered, That the respondents, William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & Company, their agents, representatives and employees, in connection with the sale and offering for sale and distribution in interstate commerce of blankets, bedspreads, or other merchandise, do cease and desist from:

1. Offering for sale and selling blankets, bedspreads, or other merchandise, to purchasers together with a sales plan or method involving the use of a lottery scheme or gift enterprise by which said

blankets, bedspreads, or other merchandise, are to be or may be resold to the purchasing public.

2. Advertising by means of printed cards, circulars, letters, or by any other means, the sale of blankets, bedspreads, or other merchandise, under any plan involving the use of a lottery scheme or gift enterprise.

3. Aiding and inducing the purchasers of such blankets, bedspreads, or other merchandise, to dispose of the same by means of any lottery, gift enterprise, or game of chance.

It is further ordered, That the respondents and each of them shall, within 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.

Syllabus

IN THE MATTER OF

PENN DRY GOODS COMPANY, AND GEORGE J. NOTH-
NAGEL TRADING AS THE STANLEY STORE AND AS
AGENT OF PENN DRY GOODS COMPANY

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

Docket 3098. Complaint, Apr. 6, 1937—Decision, June 2, 1937¹

Where an individual engaged in the purchase of blankets and bedspreads from the manufacturers or their selling agents, and in selling same to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public—

Advertised, through printed cards, circulars, and letters, and sold said products for resale under, a "Club Plan," under which each week, in accordance with weekly drawings, one of a fixed number of members who obligated themselves to some small weekly payment for a specified number of weeks, received, as determined by the name drawn by chance, article of merchandise involved, without further payments or further compliance with original undertaking, from which he was thus absolved, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with aforesaid sales plan, and aided and abetted, through aforesaid advertising, in inducing organizations, associations, and the like to purchase and dispose of his said products through lottery, gift enterprise, or game of chance, in violation of public policy, as long recognized in the common law and criminal statutes, and of an established public policy of the United States Government, and in competition with many makers and sellers of blankets and bedspreads, unwilling to offer or sell their said products together with a sales plan or method involving a lottery, game of chance, or gift enterprise, and who refrain therefrom, and with many unwilling to adopt and use said or any method involving a game of chance or sale of a chance to win by chance or any other method contrary to public policy:

With result that purchasing public was induced and persuaded to buy his said products in preference to those offered and sold by competitors, by reason of said lottery or game of chance, and of inducing, through said advertisements, circulars, and the like, purchase of his said products by aforesaid organizations and distribution thereof to consuming public through such sales plan, and with result that many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads, attracted by said plan or method and element of chance involved in sale thereof, as above set forth, were thereby induced to buy such articles, sold and distributed by him, in preference to like merchandise offered and sold by aforesaid competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to him trade and custom from his said competitors who do not use such or an equivalent practice or method, to exclude from trade in question all competitors who are unwill-

¹ Modified order published as of July 2, 1937.