

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.

Complaint

25 F. T. C.

ing to and do not use same as unlawful, to lessen competition therein and tend to create a monopoly in him 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.

Mr. Herman Hurowitz, of Philadelphia, Pa., for Penn Dry Goods Co. and *Wright, Gordon, Zachry & Parlin*, of New York City, for George J. Nothnagel.

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 Penn Dry Goods Company, a corporation, and George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store and as agent of the Penn Dry Goods 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 respondent, Penn Dry Goods Company, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 731 Arch Street, in the city of Philadelphia, State of Pennsylvania. The respondent, George J. Nothnagel, is an individual trading under the firm name and style of The Stanley Store, with his principal place of business located at 734 Haddon Avenue, in the city of Collingswood, State of New Jersey. The respondent Nothnagel does business in his own name and right and as agent for the respondent, Penn Dry Goods Company.

The respondent, Penn Dry Goods Company, is now, and for several years last past has been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof, or from manufacturers' agents, and 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.

The respondent, George J. Nothnagel, trading under the firm name and style of The Stanley Store, is now, and for some time last past

has been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof, or their selling agents, and in selling the same to clubs, fraternal organizations, hospitals, charitable institutions, and associations for resale and distribution to the purchasing public. The respondent Nothnagel has also, as agent for the respondent, Penn Dry Goods Company, been engaged in the business of taking orders for and selling blankets and bedspreads to clubs, fraternal organizations, hospitals, charitable institutions, and associations, and forwarding said orders to the said respondent, Penn Dry Goods Company.

Respondents' customers are located at points in the States of Pennsylvania, New Jersey, Maryland, and Delaware, and the respondents cause said merchandise when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, or the city of Collingswood, State of New Jersey, to the purchasers thereof at their respective places of business in the States above mentioned; and there is now, and has been for some time 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 corporations and with other individuals and with partnerships 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

Complaint

25 F. T. C.

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 respondent 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 respondent's 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 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.

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 6, 1937, issued and served its

Findings

25 F. T. C.

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 15, 1937, the respondent, Penn Dry Goods Company, a corporation, filed its answer denying the allegations of said complaint, and on May 24, 1937, the respondent George J. Nothnagel, filed his answer, in which answer he stated that he desired to waive hearing on the charges set forth in the complaint and admitted that all the material allegations in said complaint, except as in said answer expressly denied, were true and consented that the Commission might, without further evidence and without any other proceeding, make and enter its findings as to the facts and serve upon him 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.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission having duly considered the same and being now 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. Respondent, Penn Dry Goods Company, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 731 Arch Street, in the city of Philadelphia, State of Pennsylvania.

Respondent, George J. Nothnagel, is an individual trading under the firm name and style of The Stanley Store, with his principal place of business located at 734 Haddon Avenue, in the city of Collingswood, State of New Jersey.

Respondent, George J. Nothnagel, trading under the firm name and style of The Stanley Store, is now and for sometime last past has been engaged in the business of buying blankets and bedspreads from the manufacturers thereof or their selling agents, and in selling the same to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Customers of the respondent, George J. Nothnagel, are located at points in the States of Pennsylvania, New Jersey, Maryland, and Delaware, and the respondent Nothnagel causes said merchandise when sold to be transported from his place of business in

the city of Collingswood, State of New Jersey, to the purchasers thereof at their respective places of business in the States above mentioned; and there is now and has been for sometime last past a course of trade and commerce by said respondent in such blankets and bedspreads between and among the States of the United States. In the course and conduct of his business, respondent Nothnagel is in competition with other individuals and with corporations and partnerships 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 his business, as described in paragraph 1 hereof, respondent Nothnagel has offered for sale and sold his said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with the 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. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method, as suggested and advertised by respondent, 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 respondent Nothnagel 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 respondent Nothnagel has sold his blankets and bedspreads have exposed said blankets and bedspreads for sale and have sold the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent Nothnagel has thus supplied to and has placed in the hands

of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The purchasing public has been induced and persuaded to purchase respondent's said products in preference to blankets and bedspreads offered for sale and sold by respondent's competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondent Nothnagel aided and abetted in inducing organizations, associations and the like to purchase respondent's products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondent in so distributing his advertising material and circulars describing the sales plan above mentioned has been to induce organizations, associations and the like to purchase respondent's said products, and the distribution of said advertisements, circulars, and the like has had the effect of inducing the purchase of respondent's 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 respondent of said sales plan or method in the sale of his 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 respondent of said sales plan or method has had the tendency to unduly hinder competition or create monopoly. Many persons, firms, and corporations who make and sell blankets and bedspreads in competition with respondent Nothnagel, 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 have been attracted by respondent's said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and have been thereby induced to purchase blankets and bedspreads sold and distributed by respondent Nothnagel, in preference to like merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said sales plan or method by respondent has had the tendency and capacity,

11

Order

because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said trade 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 respondent Nothnagel 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 respondent Nothnagel has had the tendency and capacity to eliminate from said trade actual competitors and to exclude therefrom potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. Many of said competitors of respondent Nothnagel 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 respondent, George J. Nothnagel, individually and trading as The Stanley Store, have been 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This matter comes on to be heard by the Federal Trade Commission on the complaint filed herein on April 6, 1937, the answer of the respondent, Penn Dry Goods Company, a corporation, filed May 15, 1937, and the answer of respondent, George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store, filed herein on May 24, 1937.

The answer of respondent, George J. Nothnagel, as aforesaid, states that he desires to waive hearing on the charges set forth in the complaint, and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding he refrains from contesting this proceeding, and admits that all the material

¹ The effect of said order issued as of July 2, 1937, is to add to the third and last numbered paragraph of the original order the following qualification, namely: "this provision not applying to sales of merchandise not accompanied by any acts of respondent aiding or inducing disposition thereof under any plan involving a lottery, gift enterprise, or game of chance."

facts alleged in said complaint, except that he is or acts as agent for the Penn Dry Goods Company, are true, but within the intent and meaning of Section 5 of the Federal Trade Commission Act only and not within the intent and meaning of any other law of the United States, such answer not constituting an admission of fact for any other purpose nor to be used against him in any other proceeding, suit or action; and that said respondent Nothnagel consents 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 him 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.

The answer of respondent, Penn Dry Goods Company, a corporation, denies that it has indulged in the practices complained of in said complaint, and denies that the said respondent Nothnagel is or has been its agent, representative, or employee.

The Commission, on June 2, 1937, having made its findings as to the facts and conclusion that said respondent Nothnagel 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," and the Commission, on June 2, 1937, having entered its order to cease and desist against the respondent, George J. Nothnagel, and the matter now coming on for reconsideration upon the request of counsel for the respondent, George J. Nothnagel, dated June 25, 1937, requesting a modification of said order to cease and desist, and the Commission having duly considered the said request and being now fully advised in the premises.

It is ordered, That the order to cease and desist heretofore entered on June 2, 1937, be, and the same hereby is, vacated and set aside.

It is further ordered, That the respondent, George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store, his agents, and employees, in connection with the offering for sale, 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 mer-

chandise, under any plan involving the use of a lottery scheme or a 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; this provision not applying to sales of merchandise not accompanied by any acts of respondent aiding or inducing disposition thereof under any plan involving a lottery, gift enterprise, or game of chance.

It is further ordered, That the respondent, George J. Nothnagel, individually and trading as The Stanley Store, shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

It is further ordered, That the said complaint, insofar as it relates to the respondent, Penn Dry Goods Company, a corporation, be and the same is hereby dismissed without prejudice.

IN THE MATTER OF
HADDORFF PIANO COMPANY

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

Docket 3041. Complaint, Jan. 27, 1937—Decision, June 5, 1937

Where a corporation engaged in the manufacture of pianos and in sale and distribution thereof to retailers for resale, in competition with those who make and sell such products similar to its so-called "Vertichord Grand" type and not in any way represent their respective products as having mechanical features and other properties similar to grand pianos, and thus designate their respective products, and in competition with others who make pianos with same mechanical features and other qualities possessed by grand pianos and do thus designate same; in advertising aforesaid type, among others made and dealt in by it, in periodicals and trade journals of general circulation, and in pamphlets, folders, suggested sales talks and other advertising literature circulated to its customers and prospective customers—

Made use of word "Grand" in trade name "Vertichord Grand" to designate and describe its aforesaid type, and represented that said piano possessed same mechanical or operating features as those of the type generally designated and referred to as grand pianos, through such statements as " * * * designed to * * * maintain grand piano tone quality," " * * * volume and tone of a fine grand without taking up a grand's space," "All the advantages of a large grand piano," " * * * deep mellow tone of a large grand piano," and urged, in its said suggested sales talks, use of name "Vertichord Grand" to describe said product, and, in pamphlets distributed to retailers for members of the purchasing public, emphasized economy of space along with featured characteristics of the grand, notwithstanding fact it did not have, among distinctive operating or mechanical features different from and in some cases superior to those of pianos of other types, strings placed horizontally, gravity action of hammers and shifting soft pedal, and, while possessing tonal qualities comparable to those of baby grand, it did not possess such qualities comparable to those of the large or concert size grand piano;

With tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that its said pianos, thus designated, possessed same operating or mechanical features as present in grand pianos, as long designated, described and known to piano trade and purchasing public, and preferred by many users, and into purchase of its so-called "Vertichord Grand" type piano by reason of such belief, and with result of thereby placing in the hands of retailers instrument and means whereby they might misrepresent the operating or mechanical features and other properties of said products and induce members of purchasing public to buy the same by reason thereof, and with result that trade was diverted to it from competitors, likewise engaged in distribution and sale of pianos, who have not made use of like or similar statements and representations in sale of their respective products in commerce: