

Syllabus

IN THE MATTER OF

FRIEDA WOLCHIN, INDIVIDUALLY AND TRADING AS
WRIGHT MANUFACTURERS DISTRIBUTING COMPANY

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

Docket 3177. Complaint, July 20, 1937—Decision, Dec. 4, 1937

Where an individual engaged in sale and distribution of clocks, in commerce among the various States, and in furnishing her customers and prospective customers with push cards for use in sale of her said clocks, in accordance with said cards' explanatory legend, under which amount paid for chance was dependent upon number disclosed under card's discs, receipt of clock was dependent upon chance selection of feminine name corresponding to that disclosed under master seal after sale of all discs, and operator of card was compensated by receipt of one of such articles; in soliciting sale of and in selling and distributing her said products—

Made use of, and sold same under and through, method and plan involving distribution of said clocks to purchasing public by means of lottery scheme or gift enterprise, through sale thereof in accordance with push cards aforesaid and under scheme or plan, in accordance with explanatory legend contained thereon, by which amount paid for chance to receive clocks thus sold was dependent on particular number concealed under and disclosed by removal of card's various discs and receipt of clock was contingent upon selection of name of girl corresponding to that concealed under master seal, and operator was similarly compensated by receipt of such an article, and thereby supplied to and placed in hands of others means of conducting lotteries in sale of her merchandise in accordance with such plan, in violation of public policy long recognized by the common law and in criminal statutes, and contrary to established public policy of the United States Government, and in competition with many who are unwilling to adopt and use said or any plan involving game of chance or sale of a chance to win by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by her said method and element of chance involved in sale of clocks to purchasing public, and game of chance, or sale of a chance to procure such article at price much less than normal retail price thereof, and were induced to buy and sell her said merchandise in preference to that offered and sold by competitors who did not use same or equivalent methods, and of diverting trade and custom to her from her said competitors:

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.

Complaint

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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 Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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 an individual, doing business under the name and style of Wright Manufacturers Distributing Company, with her principal office and place of business located at 418 South Wells Street, Chicago, Ill. She is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. She causes and has caused said products when sold to be shipped or transported from her place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of her business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said clocks, has furnished her customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said clocks to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated discs, and concealed within each disc is a number; directly above each disc is a girl's name. The said push card also has a master seal, and concealed within such master seal is a name corresponding to one of the

names on the card. Purchasers select one of the discs and remove the same, disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the discs have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, receives one of the clocks heretofore referred to without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name until the selection has been made and the disc removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the discs have been selected. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money they pay. The person selecting the name corresponding to the name under the master seal receives one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise and the sale of such merchandise by and through the use thereof and by the aid of said 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.

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with respondent, as above alleged, 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, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to 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 method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from her said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of 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 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 July 20, 1937 issued, and on August 23, 1937 served, its complaint in this proceeding upon respondent, Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said Act. Thereafter on October 27, 1937 respondent filed in the office of the Commission her answer dated October 23, 1937, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure. After the filing of said answer this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission having duly considered the matter and being now fully advised in the prem-

ises, 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 is an individual and was doing business under the name and style of Wright Manufacturers Distributing Company, with her principal office and place of business located at 418 South Wells Street, Chicago, Ill. The respondent is now located at 3318 West Marquette Road, Chicago, Ill. Prior to June 15, 1937 the respondent was engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. She caused said products, when sold, to be shipped or transported from her place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. Prior to June 15, 1937 there was a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business respondent was in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of her business as described in paragraph 1 hereof respondent, in soliciting the sale of and in selling and distributing the said clocks, furnished her customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involved the distribution of said clocks to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was substantially as follows:

The said pushcard had a number of partially perforated discs, and concealed in each disc was a number; directly above each disc was a girl's name. The said push card also had a master seal, and concealed within such master seal was a name corresponding to one of the names on the card. Purchasers selected one of the discs and removed the same, disclosing the number thereunder. Persons selecting numbers from 1 to 29 paid in cents the amount of such number, and persons selecting numbers over 29 paid 29¢. The push card had printed thereon a legend informing purchasers and prospective purchasers of the plan or method by which said push card was operated and by which the clocks described thereon were to be distributed.

When all of the discs had been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal received one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, received one of the clocks heretofore referred to without further charge or additional service. The numbers under the names were concealed from purchasers and prospective purchasers, and they did not know how much they would have to pay for the privilege of selecting a particular name until the selection had been made and the disc removed. The name under the master seal was concealed from purchasers and prospective purchasers until all of the discs had been selected. Thus, customers selecting names which did not correspond with the name under the master seal received nothing but the privilege of making a selection for the money they paid. The person selecting the name corresponding to the name under the master seal received one of the clocks for a price not exceeding 29¢, which was less than the normal retail price of such clocks. The purchasing public was thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks were thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer paid for a chance was determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnished the said push cards used the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, was, and is, a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and was, and is, contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involved a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who did and do sell or distribute similar merchandise in competition with the respondent as above alleged were and are unwilling to adopt and use said method

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or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that was or is contrary to public policy, and such competitors have refrained and do refrain therefrom. Many persons were attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, had the tendency and capacity to and did divert trade and custom to respondent from her said competitors who did not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, were, and 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer filed on October 27, 1937 by the respondent admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent had 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, Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, her agents, representatives, and employes, in connection with the offering for sale, sale, and distribution of clocks and other merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or similar devices for the purpose of enabling such persons to dispose of or sell, by the use thereof, clocks or other articles of merchandise;

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2. Mailing, shipping, or transporting to members of the public push cards or similar devices so prepared or printed as to enable said persons by the use thereof to sell or distribute clocks or other articles of merchandise; and

3. Selling or otherwise disposing of clocks or other articles of merchandise by the use of push cards or similar devices.

It is further ordered, That the respondent shall, within 30 days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

J. C. HICKSON & COMPANY

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

Docket 2554. Complaint, Sept. 18, 1935—Decision, Dec. 7, 1937

Where a corporation engaged in the growing and packing of citrus fruits, and in the sale thereof to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in similar sale and shipment—

- (a) Set forth, in advertisements and on labels of crates thereof, words "Indian River," through statements such as "Indian River," "Indian River Fruit Exclusively," "Groves and packing houses Ft. Pierce, Vero Beach, White City, Gifford, Mims, on the Indian River," notwithstanding fact fruit in question was not that recognized superior quality and preferred fruit raised in Indian River Valley, but was grown in area far distant therefrom, and it owned no groves or packing houses at any point within aforesaid area and raised no fruit therein; and
- (b) Falsely represented number of pieces of fruit contained in certain cartons by placing thereon figure indicating that number of pieces contained therein was greater than that of pieces of fruit actually packed therein;

With capacity and tendency to mislead purchasing public into erroneous belief that fruit thus labeled was grown in Indian River Valley area, and with effect of misleading and deceiving consuming public as to origin of such fruit and number of pieces packed in its said cartons, and of causing substantial number of purchasing public to buy its said products because of erroneous belief thus engendered, and of unfairly and substantially diverting trade in commerce involved to it from its competitors; to their injury and that of the public:

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

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

Mr. Alden S. Bradley and *Mr. James I. Rooney* for the Commission.

Weissbuch & Silverman, of Miami, Fla., for respondent.

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 J. C. Hickson and Company, a corporation, hereinafter referred to as respondent, has been and is 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