

IN THE MATTER OF

K & S SALES COMPANY, IN ITS OWN NAME AND RIGHT,
AND TRADING AS GARDEN CITY NOVELTY MANU-
FACTURING COMPANY, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1857. Complaint, Feb. 25, 1937¹—Decision, Jan. 13, 1938*

Where a corporation engaged in sale and distribution of women's and men's hosiery, clocks, cameras, fountain pens, radios, toys, novelties, and other articles—

- (a) Furnished, along with instructions for agent or operator, various devices and plans of merchandising involving variety of punchboards, push cards or similar devices for retailer's or operator's use in selling and delivering to purchasing public its said products, under schemes by which chance purchaser received more costly article, or nothing further, dependent upon success or failure in selection of right number or name, and paid, in accordance with particular plan, fixed, or varying, amount, dependent upon number secured; operators were compensated by receipt of article; and makers of last punch or push were, in some cases, also awarded prize thereof; and thereby supplied to and placed in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of its said merchandise, with knowledge and intent that such various plans were and would be used in such distribution to public by lot or chance and in competition with many who are opposed to use of punchboards, push cards and other devices in sale and distribution of their merchandise, and, as contrary to public policy, refrain from furnishing the same;

With result that many dealers in and ultimate purchasers of merchandise similar to or identical with that thus dealt in by it were attracted by said methods and element of chance involved in sale thereof as aforesaid, and were thereby induced to buy, sell or distribute its said merchandise in preference to that offered and sold by competitors who do not use such or equivalent methods, and trade was thereby diverted to it from them, to the prejudice and injury of the public and competitors, and there was a restraint upon and a detriment to the freedom of sale and legitimate competition; and

- (b) Represented and caused to be represented, through firm name word "Manufacturing," that it was manufacturer of some or all of merchandise sold and distributed by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever and did not make any merchandise sold by it;

With effect of misleading and deceiving many customers into erroneous belief that it made some or all of such merchandise, and that persons dealing with it were buying directly from the manufacturer and thereby eliminating profits of middlemen and obtaining advantages not had by those buying from such persons, and of diverting trade to it from others, and those who do not falsely represent that they manufacture their said products; and

¹ Amended and supplemental.

(c) Represented, in advertisements in newspapers and periodicals of general circulation, that merchandise sold and distributed by it was given away or might be obtained free of charge, through such statements as "GIVEN AWAY! You get one—Your friends get one—without cost. * * *," "* * * big money by showing others how to obtain without cost," etc., facts being articles thus referred to were not given away and it did not pay big money for giving away such articles, but persons receiving same were required to forward money in payment therefor, and articles in question were distributed through lottery plans above described and by lot or chance, with person or agent selling same receiving such article as compensation for so doing;

With effect of misleading and deceiving purchasing public and prospective sales agents, and inducing them to become its agents or representatives or to distribute its said merchandise, and of diverting trade to it from others selling similar products who do not make such claims or representations:
Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

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

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on July 11, 1930, issue its complaint herein, charging and alleging that respondent had been guilty of unfair methods of competition in commerce, as "commerce" is defined in 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

Whereas, This Commission, having reason to believe that respondent herein has been and is using unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest pursuant to the provisions of the Act aforesaid, the Federal Trade Commission charges that the K & S Sales Company, a corporation, in its own name and right, and also trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of

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business located at 4329 East Ravenswood Avenue, in the city of Chicago, State of Illinois. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name and also advertises, offers for sale, and sells its merchandise under the trade names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company. Respondent is now, and for several years last past has been, engaged in selling various articles of merchandise to purchasers thereof located in various States of the United States and in the District of Columbia. It causes said merchandise when sold to be transported from its place of business in the State of Illinois into and through other States of the United States and the District of Columbia to purchasers thereof located in a State or States of the United States other than the State of Illinois and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the sale and distribution of its said merchandise or products, said respondent has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices or plans of merchandising consist of a variety of punchboards, push cards, or fortune boards, or other similar devices, the method or use of which by retail dealers or individuals in connection with the sale and delivery to the purchasing public of respondent's said merchandise or products was and is substantially as follows:

(a) Said punchboards consist of boards of various shapes and sizes with from 100 to 4,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes contained in the board but not arranged in numerical sequence, and said slips are so placed and secreted in said punchboards that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Customers pay 5¢ to 10¢ for each punch from the board, and the purchasers of punches who receive numbers calling for an article of merchandise receive such article, and purchasers who receive numbers other than those enumerated on the board, or who do not

qualify by purchasing the last punch on the boards receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board.

(b) The push cards have a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. There are as many separate numbers as there are disks on the board, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from customers and prospective customers until a selection has been made and the disk selected separated from the card. The price of sales varies, but on some of the cards the price which customers pay ranges from 1¢ to 29¢, depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents; numbers over 29 pay 29¢. The push card bears statements or legends informing the customers and prospective customer that certain numbers entitle the purchaser obtaining the same to certain specified merchandise. Purchasers of pushes who receive one of the specified numbers receive the articles of merchandise as described in said statements or legends. Purchasers who do not receive one of the specified numbers receive nothing for their money other than the privilege of pushing a disk from said card. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push card.

(c) Other push cards have a number of girls' names immediately above the partially perforated disks, and when all the disks have been separated from the push card a master seal on said card is removed exposing a girl's name similar to one of those mentioned on said card, and the purchaser who pushed the disk under that name is entitled to the article of merchandise specified. On still other push cards certain specified numbers are free, and the winner is ascertained after all the pushes have been purchased by removing a master seal and disclosing a legend. On some of the push cards the purchasers pay from 1¢ to 35¢, depending upon the number pushed out; numbers under 35 pay the amount of the number in cents; and numbers over 35 pay 35¢.

The said punchboards, push cards and fortune boards vary in detail but involve substantially the same features as the above plans and lottery schemes.

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Respondent furnishes retail dealers and individuals with various display posters, advertisements and printed instructions, to be used by such merchants and individuals in distributing and using said punchboards, push cards and fortune boards.

The merchandise sold and distributed by respondent includes, among other things, radio receiving sets, clocks, hosiery, portable mixers, sandwich toasters, roasting ovens, washing machines, pocket knives, razors, fountain pens, automatic pencils, pen and pencil sets, jewelry, pipes and other smokers' accessories, flashlights, cigarette cases, ladies' compacts, beaded bags, manicure sets, toilet sets, and various other articles of merchandise.

The purchasing public is induced and persuaded into purchasing punches from said boards and cards in the hope that they may obtain one of the prize-winning numbers and thus obtain one of the prizes called for by said numbers. Merchandise of the respondent is thus distributed to purchasers of the punches from the boards and cards wholly by lot or chance.

PAR. 3. The aforesaid retail dealers of respondent expose said articles of merchandise in connection with the aforesaid punchboards, push cards or fortune boards, and sell punches, pushes or fortune slips to the purchasing public in accordance with the aforesaid plans, whereby the said merchandise of the respondent is distributed to the purchasers of punches, pushes or fortune slips from the said boards or cards wholly by lot or chance.

The respondent forwards its push cards to individuals who sell pushes from said cards and deliver to the successful purchasers the merchandise to which they are entitled, in accordance with the sales plans hereinbefore described.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof.

The use by respondent of said methods in the sale of its merchandise, and the sale of its merchandise by and through the use thereof and by the aid of said methods, 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.

Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, are un-

willing to adopt and use said methods 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. The use of said methods by respondent has the tendency and capacity, because of said game of chance, to divert trade and custom to respondent from its said competitors who do not use the same or equivalent methods.

PAR. 5. Many dealers in and ultimate purchasers of respondent's merchandise are attracted by respondent's said methods 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 equivalent methods, and trade is thereby diverted to respondent, from its said competitors.

PAR. 6. In the course and conduct of its said business respondent has caused and causes the representation to be made to its customers and prospective customers, by use of the firm name and style of Garden City Novelty Manufacturing Company and by others means, that it is the manufacturer of the merchandise which it sells and distributes. A substantial portion of the purchasing public have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

The use by respondent of said representation that it is a manufacturer has the capacity and tendency to and does mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middleman and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by it. There are many competitors of respondent who do not falsely represent that they manufacture the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to and does unfairly divert trade to respondent from its said competitors.

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PAR. 7. In the course and conduct of its business, respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, containing, among others, statements and representations of which the following are typical illustrations:

(a) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing Time Teller. Also it can pay you big money giving it away free. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4338 Ravenswood Ave.,

Chicago, Ill.

(b) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing TIME TELLER. Also it can pay you big money by showing others how to obtain without cost. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4344-B Ravenswood Ave.,

Chicago, Ill.

The respondent inserted and caused to be published these advertisements in newspapers, magazines and other periodicals of general circulation with the intent and knowledge that the advertising would be displayed before and read by the public. The advertisements referred to above are false and misleading, in that: the clocks are not given away; persons answering the advertisement do not receive one without cost; their friends do not receive one without cost; respondent does not pay big money for giving them away free; respondent requires persons receiving clocks to sell chances on push cards, or to render other services, or to pay cash for the said clocks; it is necessary for somebody to buy or sell something before the clocks are delivered.

Each and all of the foregoing false, misleading, and exaggerated claims and representations hereinabove set out have and have had the capacity and tendency to mislead and deceive the purchasing public and prospective sales agents into the belief that they are true, and to induce them to purchase the clocks of respondent or become agents of the respondent in such belief, and to unfairly divert trade to respondent from its competitors who do not make such false, misleading or exaggerated claims, statements or representations concerning the products sold or offered for sale by such competitors.

PAR. 8. The aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and respondent's competitors. Said methods, 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 July 11, 1930, issued and served its complaint in this proceeding upon respondent K & S Sales Company, a corporation. Thereafter on February 25, 1937, the Federal Trade Commission issued and served an amended and supplemental complaint upon the respondent, K & S Sales Company, a corporation, in its own name and right and trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company, 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 amended and supplemental complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. In addition to said testimony and other evidence, a stipulation as to certain facts was entered into between W. T. Kelley, Chief Counsel of the Federal Trade Commission, and John A. Nash, counsel for the respondent.

Said testimony and other evidence and stipulation were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended and supplemental complaint, answer thereto, testimony and other evidence, stipulation of counsel, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and for the respondent; and the Commission having duly considered the matter, 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. The respondent, K & S Sales Company, is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 4329

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East Ravenswood Avenue in the city of Chicago, State of Illinois. The respondent does business in its own name and right and also uses the trade names and styles, Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company. Respondent is now, and for several years last past has been engaged in advertising, offering for sale, and selling various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and causes its said merchandise, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in the State of Illinois and in practically all the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. The merchandise so sold and distributed by respondent includes ladies' and men's hosiery, locks, cameras, fountain pen desk sets, radios, food mixers, toastmaster and hospitality trays, roastmasters, vacuum cleaners, washing machines, watches, cigarette lighters, penknives, hunting knives, ladies' vanity cases, opera and field glasses, military brush sets, pipes, air rifles and toys, and novelties as well as various other articles of merchandise. In so carrying on said business respondent is, and has been, engaged in active competition with other corporations and with partnerships and individuals engaged in the manufacture, sale and distribution of similar or like articles of merchandise, or in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 above, respondent furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes in distributing said merchandise to the ultimate consumers wholly by lot or chance. Said devices or plans of merchandising consist of a variety of punchboards, push cards, or fortune boards, or other similar devices, the use of which by retail dealers or individuals in connection with the sale and delivery to the purchasing public of respondent's said merchandise or products was, and is, substantially as follows:

(a) Said punchboards consist of boards of various shapes and sizes with from 100 to 4,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes

contained in the board but not arranged in numerical sequence, and said slips are so placed and secreted in said punchboards that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Customers pay 5¢ or 10¢ for each punch from the board, and the purchasers of punches who receive numbers calling for an article of merchandise receive such article, and purchasers who receive numbers other than those enumerated on the board, or who do not qualify by purchasing the last punch on the board, receive nothing for their money. The said articles or merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board.

(b) The push cards have a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. There are as many separate numbers as there are disks on the board, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from customers and prospective customers until a selection has been made and the disk selected separated from the card. The price of sales varies, but on some of the cards the price which customers pay ranges from 1¢ to 29¢ depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents; numbers over 29 pay 29¢. The push card bears statements or legends informing the customers and prospective customers that certain numbers entitle the purchasers obtaining the same to certain specified merchandise. Purchasers of pushes who receive one of the specified numbers receive the articles of merchandise as described in said statements or legends without additional cost. Purchasers who do not receive one of the specified numbers receive nothing for their money other than the privilege of pushing a disk from said card. The said articles of merchandise vary in value but each of said articles of merchandise is of greater value than the cost of a single push from said push card.

Other push cards have a number of girls' names immediately above the partially perforated disks, and when all the disks have been separated from the push card a master seal on said card is removed exposing a girl's name similar to one of those mentioned on said card, and the purchaser who pushes the disk under that name is entitled to the article of merchandise specified without additional cost. On

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still other push cards certain specified numbers are free, and the winner is ascertained after all the pushes have been purchased by removing a master seal and disclosing a legend. On some of the push cards the purchasers pay from 1¢ to 35¢, depending upon the number pushed out; numbers under 35 pay the amount of the number in cents; and numbers over 35 pay 35¢. The said punchboards, push cards and fortune boards vary in detail but all involve substantially the same features as the above plans and lottery schemes. In all of the aforesaid plans the person who receives the article of merchandise is selected wholly by lot or chance and makes no additional payment, while the other purchasers receive nothing for their money other than the privilege of making a push or punch.

PAR. 3. Respondent furnishes its customers and prospective customers with various display posters, advertisements, and printed instructions to be used in distributing and using said punchboards, push cards, fortune boards, and other devices in connection with the sale and distribution of the aforesaid merchandise. On one of the said printed instruction circulars, there are, among other things, the following printed legends, to wit:

HOW TO OBTAIN YOUR MODERNE ROTARY CLOCK

This card consists of 32 girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from No. 1 to No. 52 but your customers pay only 1¢ to 29¢, according to the number disclosed under the disc punched. For instance, if customer punches 1 he pays 1¢. If 10 is punched, he donates 10¢, or if 50 is punched, he pays only 29¢. **NOTHING HIGHER THAN 29¢—29¢ is maximum cost.** (Total \$3.60.)

When all names have been punched and collections made, you then remove the large seals and disclose the winners—the persons who punched the corresponding name received One (1) Moderne Rotary Clock, valued at \$5.00.

And, for your efforts, you also receive one Moderne **ROTARY CLOCK**.

Upon receipt of your order (see other side) with the \$3.60 remittance, (or we will ship C. O. D., F. O. B. Chicago) we immediately ship you Three (3) Moderne Rotary Clocks, Two (2) of which may be given the holders of the names under the large seals—the other may be retained by you.

Isn't this an easy way to obtain a clock valued at \$5.00? Nothing hard about this—nothing complicated—you merely show the clock or illustration to your friends, neighbors, coworkers in the office, shop, etc. They will all want it.

This material is sent you absolutely free for your use if you wish. It can be used with any merchandise. If you desire to purchase from us, you can do so at any time.

NOTE—Write purchaser's name opposite the girls name he selects and then remove disc by pushing with pencil or any pointed object.

Don't forget the surprise gift—send your order and remittance within 15 days and the **FREE** gift will certainly **SURPRISE** you.

As stated above, the other devices which respondent furnishes are identical in principle but vary in detail. The members of the public to whom respondent furnishes its said devices and literature use the same in the manner suggested by respondent thereby distributing respondent's merchandise to others and procuring respondent's merchandise for themselves. The sale and distribution of respondent's merchandise through the use of, or by means of, said punchboards, push cards, or other devices constitutes the operation of lottery games of chance or gift enterprises, and the respondent, in furnishing said punchboards, push cards, or other devices, puts in the hands of others the means of conducting lottery games of chance or gift enterprises in the distribution of its merchandise.

PAR. 4. The respondent, in furnishing said punchboards, push cards, and other devices, has knowledge that the said devices are, and have been, used in distributing its merchandise and furnishes said punchboards, push cards, and other devices so that its merchandise may be sold or distributed to the public by lot or chance.

PAR. 5. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent who do not furnish punchboards, push cards, or devices similar to those furnished by respondent, and who do not furnish any devices by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to the use of punchboards, push cards, and other devices in the sale and distribution of their merchandise and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said punchboards, push cards, and other devices, injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from its said competitors by reason of the furnishing of said punchboards, push cards, or like devices. The use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of sale and legitimate competition.

PAR. 6. Many dealers in, and ultimate purchasers of, merchandise similar to or identical with respondent's merchandise are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy, sell, or distribute respondent's merchandise in

preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods, and trade is thereby diverted to respondent from its said competitors.

PAR. 7. As stated previously in these findings, the respondent sells its merchandise in practically all of the States of the United States and in the District of Columbia, and while the annual volume of respondent's business was not shown exactly, an official of the respondent testified, and the Commission finds that approximately 150,000 push cards were distributed for the distribution of ladies' and men's silk hosiery and that sales of such hosiery were in excess of \$15,000; that during the period of about one year immediately preceding the hearings in this case, the respondent distributed approximately 1,000,000 push cards for the distribution of one type of clock; and that it distributed approximately 100,000 push cards for the distribution of one of its cameras. And, further, that in the sale and distribution of its merchandise by push cards, the respondent during the period from March until October, 1936, both months inclusive, distributed approximately 1,500,000 push cards. The Commission also finds that its sale of merchandise by means of punchboards and other devices is, and has been, substantial.

PAR. 8. The Commission finds that the sale and distribution in interstate commerce of merchandise as described in paragraph 1 hereof, by means of lot or chance, is contrary to public policy.

PAR. 9. In the course and conduct of its business, respondent has caused, and causes, the representation to be made to its customers and prospective customers by the use of the firm name and style, Garden City Novelty Manufacturing Company, that it is the manufacturer of some or all of the merchandise which it sells and distributes, which representation is false and misleading for the reason that the respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by it.

The Commission further finds that a considerable number of the purchasing public has a preference for dealing direct with the manufacturer of products being purchased believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman. The use by respondent of said representation that it is a manufacturer has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent manufactures some or all of the merchandise sold by it and that persons dealing with the respondent are buying said merchandise directly from the manufacturer thereof, thereby elimi-

nating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. There are persons, firms, and corporations selling merchandise similar to the merchandise sold and distributed by respondent who do not falsely represent that they manufacture the merchandise sold by them. The use by respondent of the representation that it is the manufacturer of some or all of the merchandise sold and distributed by it has the tendency and capacity to, and does, divert trade to respondent from other persons, firms, and corporations, selling similar merchandise.

PAR. 10. In the course and conduct of its business respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States containing among other statements and representations of which the following are typical illustrations:

(b) (PICTURE OF A CLOCK) GIVEN AWAY You get one—Your friends get one—without cost. Let us give you the details of this amazing Time Teller. Also it can pay you big money giving it away free. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4338 Ravenswood Ave.

Chicago, Ill.

(b) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing TIME TELLER. Also it can pay you big money by showing others how to obtain without cost. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4344-B Ravenswood Ave.

Chicago, Ill.

The clocks referred to in said advertisements are not given away. Persons answering the advertisement do not receive one without cost, and friends of persons answering said advertisements do not receive one without cost. Respondent does not pay big money for giving away said clocks free, the facts being that respondent requires persons receiving clocks to forward money in payment therefor. The said clocks are distributed by means of push cards heretofore described in these findings, the said clocks thus being distributed by lot or chance to a purchaser of such a chance from said push cards and the person or agent of the respondent who sells the said chances receiving a clock for their services.

Such false, misleading, and exaggerated advertisements and representations have the capacity and tendency to, and do, mislead and deceive the purchasing public and prospective sales agents and induce such persons to become agents or representatives of the respondent or to distribute respondent's merchandise. Such claims and rep-

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representations have the capacity and tendency to, and do, divert trade to respondent from others selling similar merchandise who do not make such claims or representations.

CONCLUSION

The aforesaid acts and practices of the respondent, K & S Sales Company, 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 amended and supplemental complaint of the Commission, the answer of respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said amended and supplemental complaint and in opposition thereto, stipulation of counsel as to certain facts, briefs filed herein, and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission having made its findings as to the facts and 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, K & S Sales Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of various articles of merchandise in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping or transporting to the members of the public or to dealers push cards, punchboards, or similar devices so prepared or printed as to enable said persons or dealers by the use thereof to sell or distribute merchandise being offered for sale and sold by respondent;

3. Selling or otherwise disposing of various articles of merchandise by the use of push cards, punchboards, or similar devices;

4. Representing by the use of the firm name, Garden City Novelty Manufacturing Company, or otherwise, that it is the manufacturer of some or all of the merchandise which it sells and distributes;

5. Representing directly or indirectly by the use of advertisements in magazines and periodicals or otherwise that the merchandise which it sells or distributes is given away or may be obtained free of charge.

It is further ordered, That the respondent, K & S Sales Company, a corporation in its own name and right, and trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company, shall, within 30 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

MIKE GELLMAN AND NATE GELLMAN, INDIVIDUALLY,
AND TRADING AS GELLMAN BROTHERS

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

Docket 1880. Complaint, Nov. 28, 1930—Decision, Jan. 13, 1938

Where a firm engaged in sale and distribution of hunting knives, clocks, wrist watches, compacts, cameras and various other articles of merchandise—
Furnished various devices and plans of merchandising involving variety of punchboards, push cards, or similar devices for retailer's or operator's use in selling and delivering to purchasing public its said products, under schemes by which chance purchaser received more costly article, or nothing further, dependent upon success or failure in selection of right number, and paid, in accordance with particular plan, fixed, or varying, amount, or nothing, dependent upon particular number secured; and thereby put in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of their merchandise, with knowledge and intent that such devices were and would be used in such distribution to public by lot or chance by retail dealers and other vendees of their said products, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who are opposed to use of such devices in sale and distribution of their merchandise, and refrain from furnishing the same;

With result that sale of merchandise by means of said devices by competitors was injuriously affected, and trade was diverted to them from competitors by reason of furnishing the same, to their prejudice and injury and that of public, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

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

COMPLAINT

Acting in the public interest, 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 charges that Mike Gellman and Nate Gellman, individually and as copartners trading as Gellman Brothers, hereinafter referred to as respondents, have been and are using unfair methods of competition