

Complaint

IN THE MATTER OF

NATIONAL 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 3053. Complaint, Feb. 10, 1937—Decision, Jan. 25, 1938

Where a corporation engaged in sale and distribution of rotary clocks, automatic vibro shavers, cameras, and various other articles of merchandise—
Furnished and distributed to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting particular items of its said merchandise and instructions for sale thereof under plans by which chance purchaser paid for chance varying amount, dependent upon number disclosed within various disks of aforesaid cards, and received article of merchandise or nothing other than push, dependent upon success or failure in selecting girl's name corresponding to that concealed under card's master seal, and it compensated by merchandise its operator or representative, and thereby 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 said cards had been, were, and would be, used in sale and distribution of its said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by aforesaid competitors was thereby injuriously affected and trade was diverted from them to it by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of sale and legitimate competition; to the prejudice and injury of the public and competitors:
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 and *Mr. P. C. Kolinski* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that National Manufacturers Distributing Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of

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competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Manufacturers Distributing 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 1420 South Halsted Street, in the city of Chicago, State of Illinois. It is now, and for more than 1 year last past has been, engaged in the sale and distribution of rotary clocks and other merchandise in commerce between and among the various States of the United States and in the District of Columbia, and causes and has caused said products when sold to be shipped from its place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois and others located in various other States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of clocks and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described above, respondent, in soliciting the sale of and selling its products in interstate commerce, has adopted and pursued and still continues the following methods and practices:

Respondent distributes to the public, through the United States mails in interstate commerce, certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of rotary clocks and circulars explaining respondent's plan of selling said merchandise and of alloting it and other articles as premiums or prizes to the operators of the push card.

Respondent's push card bears 24 feminine names with ruled columns on reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 24 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically on reverse side of card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal, and concealed under this seal is one

of the feminine names appearing on reverse side of the said card. The push card bears printed legends or instructions, as follows:

Name under seal receives
FAMOUS ROTARY CLOCK
 The world's newest time teller
UNIQUE UNUSUAL DEPENDABLE
\$5.00 VALUE
 Nos. 1 to 29 pay what you draw
 Over 29 pay only 29¢
NO HIGHER

Write your name opposite name you select on reverse side

Sales of rotary clocks by means of said push card are made in accordance with the above-described legends or instructions. Said prize or premium is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes one rotary clock and additional merchandise to its representative making sales by means of said push card. Respondent also furnishes its representative with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

WHAT TO DO. There is nothing complicated—you merely show the clock-illustration to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful modern Rotary Clock for the small sum of 1¢ to 29¢. The enclosed sales card contains 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29 pay what they draw. All numbers over 29 pay only 29¢—no higher. When the sales card is completed the amount taken in will be \$6.52. For your cooperation in completing the sales card you will receive absolutely free a Rotary Clock and the person selecting the correct name corresponding with the one under the large seal will also receive a Rotary Clock.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push card, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth.

The sale of respondent's said merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise contrary to the established public policy of the United States and contrary to criminal statutes of many of the States of the United States. By reason of said facts, many competitors of respondent are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and such competitors refrain therefrom.

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

PAR. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade, and custom from its competitors who do not use the same or equivalent methods; to exclude from said clock trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said clock trade and to tend to create a monopoly of said clock trade in respondent and such other competitors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said clock trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said clock trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or any method involving a game of chance or the sale of a chance to win clocks by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of the purchasers of said clocks, or because of any or all of such reasons.

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 February 10, 1937, issued and served its complaint in this proceeding upon respondent, National Manufacturers Distributing 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 complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said 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. The said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; 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 National Manufacturers Distributing 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 1420 South Halsted Street in the city of Chicago, State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of rotary clocks, automatic vibro shavers, cameras, and various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. It causes 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 more than 1 year 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. 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 of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 above, respondent in soliciting the sale of, and selling, its products, has adopted and pursued, and still continues the following methods and practices:

Respondent distributes to the members of the general public in practically all States of the United States and in the District of Columbia, through the United States mail, certain literature, instruc-

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tions, and sales outfits, including paper push cards, order blanks and advertisements containing illustrations of particular items of merchandise which it is offering for sale, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the said push card.

All of the said push cards involve the same principle or sales plan or method, but vary to some extent in detail. One of said push cards bears 24 feminine names with ruled columns on reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 24 small round partially perforated disks marked "PUSH", below each of which is printed one of the feminine names printed alphabetically on reverse side of card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal, and concealed under this seal is one of the feminine names appearing on reverse side of the said card. The push card bears printed legends or instructions, as follows:

Name under seal receives
FAMOUS ROTARY CLOCK
The world's newest time teller
UNIQUE UNUSUAL DEPENDABLE
\$5.00 VALUE
Nos. 1 to 29 pay what you draw
Over 29 pay only 29¢
NO HIGHER

Write your name opposite name you select on reverse side

Sales of rotary clocks by means of said push card are made in accordance with the above-described legends or instructions. Said prize or premium is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes one rotary clock and additional merchandise to its representative making sales by means of said push card. Respondent also furnishes its representative with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

WHAT TO DO. There is nothing complicated—you merely show the clock-illustration to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful modern Rotary Clock for the small sum of 1¢ to 29¢. The enclosed salescard contains 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29

pay what they draw. All numbers over 29 pay only 29¢—no higher. When the sales card is completed the amount taken in will be \$6.52. For your cooperation in completing the sales card you will receive absolutely free a Rotary Clock and the person selecting the correct name corresponding with the one under the large seal will also receive a Rotary Clock.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. Some of said push cards are furnished by respondent and are used by the public in purchasing and distributing automatic vibro shavers, cameras, and other merchandise sold and distributed by respondent. The members of the public to whom respondent furnishes its push cards and other 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 the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondent, in furnishing said push cards, puts in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of its merchandise.

PAR. 3. The respondent, in furnishing said push cards, has knowledge that said push cards are, and have been used, in distributing its merchandise, and furnishes said push cards so that its merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. 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 push cards similar to those furnished by respondent, and who do not furnish any device 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 use of push cards 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 push cards 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 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.

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PAR. 5. 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 officer of the respondent testified, and the Commission finds, that the respondent's annual volume of business is, and has been, substantial.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of clocks, automatic shavers, cameras, and other merchandise, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent National Manufacturers Distributing Company are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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, the answer of the 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 complaint and in opposition thereto, 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 National Manufacturers Distributing Company, its officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of clocks, automatic shavers, cameras, and other 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 or other 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 members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

It is further ordered, That the respondent 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
**W. A. LEITH, INDIVIDUALLY AND TRADING AS STYLE
SILK COMPANY**

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

Docket 3054. Complaint, Feb. 10, 1937—Decision, Jan. 25, 1938

Where as individual engaged in sale and distribution of silk hosiery and other merchandise—

Furnished and distributed to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting his said merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling same, by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed within various disks of aforesaid cards, and received one or two pairs of hosiery, or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under cards' master seals, and he compensated by merchandise operator or representative, and thereby placed in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of his said merchandise, with knowledge and intent that said cards had been, were and would be used in sale and distribution of his said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by aforesaid competitors was thereby injuriously affected and trade was diverted from them to him by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition; to the prejudice and injury of the public and competitors:

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 and *Mr. P. C. Kolinski* for the Commission.

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

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. A. Leith, individually, and trading as Style Silk 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