

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

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 is an individual doing business under the name and style of Style Silk Company, with his principal office and place of business located at 529 South Franklin Street, in the city of Chicago, State of Illinois. He is now, and for more than 1 year last past has been engaged in the sale and distribution of hosiery 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 his 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 his business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of hosiery 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 his business, as described above, respondent, in soliciting the sale of and selling his products in interstate commerce, has adopted and pursued and still adopts and pursues 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 hosiery 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 push card. In order to obtain addresses of "prospects," respondent addresses a letter to a woman employee of some firm or organization offering her a pair of ladies' silk hosiery free on condition that she send to respondent the names and addresses of 10 other women in different offices. If the person addressed complies, the pair of hosiery promised of the size and color indicated is sent to her by respondent, and to each of the other "prospects" respondent sends said sales literature, including a paper push card with printed instructions for its operation.

Respondent's push card bears 60 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has 60 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed within.

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each disk is a number which is disclosed when the disk is pushed or separated from the card. The push board also has a large red partially perforated disk and a large blue partially perforated disk, and concealed within each of these two disks is one of the feminine names appearing elsewhere on the said card. The push card bears printed legends or instructions, as follows:

RED
SEAL

14 Numbers
are FREE

BLUE
SEAL

5 — 15 — 20 — 25
30 — 35 — 38 — 40
45 — 48 — 50
55 — 58 — 60

Lucky Name under Red Seal Receives
TWO Pairs
Ladies' Silk Hosiery

Lucky Name under Blue Seal Receives
ONE PAIR

Ladies' Silk Hosiery

Notice: If Men's

Hosiery are wanted we

will send 3 pair in

place of each pair of
Ladies'.

PAY ONLY WHAT YOU DRAW—1¢ to 15¢

Any number over 15 pays only 15¢

All numbers have Equal Chance

No Credit

First write your name opposite name
you select, then push out with
Pencil Point

Sales of hosiery by means of said push card are made in accordance with the above described legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer receives one or two pairs of hosiery free or pays a sum of money from 1 cent to 15 cents, and the fact as to whether a customer receives nothing for the amount paid or receives one or two pairs of ladies' silk hosiery or three or six pairs of men's hosiery, is thus determined wholly by lot or chance.

Respondent furnishes two pairs of ladies' hosiery or six pairs of men's hosiery to his representative making sales by means of said push card. Respondent also furnishes his representative with additional printed instructions or suggestions for using his said push cards.

PAR. 3. Respondent, in selling his 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 his 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 hosiery 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 his competitors who do not use the same or equivalent methods; to exclude from said hosiery trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said hosiery trade and to tend to create a monopoly of said hosiery 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 hosiery trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said hosiery 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 hosiery 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 hosiery, or because of any or all of such reasons.

PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made upon advertising circulars accompanying sales outfits furnished to his representatives, as follows:

Full-Fashioned Guaranteed Ringless Pure Silk Hosiery

Value \$1.50

In truth and in fact, the hosiery sold and offered for sale by the respondent, under the above-stated representation, at a price of \$1.50 was not and is not of the type and brand of hosiery customarily sold at \$1.50. The retail price so advertised was not and is not the price at which such hosiery was or is intended to be sold, but was and is greatly in excess of the price at which such hosiery is sold or intended to be sold in the usual course of trade.

PAR. 6. The false and misleading representation hereinabove set out, together with the false and fictitious price marking, on the part of the respondent, in the sale and offering for sale of hosiery, has the tendency and effect to mislead and deceive and does mislead a substantial portion of the consuming public by inducing them to believe that the price so advertised was and is the usual or customary price at which said hosiery was or is sold or intended to be sold in the course of regular retail trade.

PAR. 7. There are among the competitors of respondent many who do not falsely represent the price of hosiery offered by them for sale, or who do in fact sell and offer for sale hosiery which is truthfully represented as to value and price.

Respondent's false representation has had and now has the tendency and capacity to mislead and deceive a substantial portion of the consuming public into the erroneous belief that such representation is true, causing them to purchase respondent's product in reliance on same. Said false representation has the tendency and capacity to, and does, divert trade to respondent from his competitors who truthfully advertise their products, thereby causing injury to substantial competition in commerce.

PAR. 8. The aforementioned method, acts, and practices of the respondent are all to the prejudice of the public and of respondent's 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 the respondent, W. A. Leith, individually and trading as Style Silk Company, charging him 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 now being 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 W. A. Leith is an individual doing business under the trade name, Style Silk Company, with his principal office and place of business located at 529 South Franklin Street in the city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the sale and distribution of silk hosiery, ladies' lingerie, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. He causes such merchandise, when sold, to be shipped or transported from his principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in practically all of 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 some time 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 individuals and with partnerships and corporations 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 his business as described in paragraph 1 above, respondent in soliciting the sale of and selling

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his merchandise has adopted and pursued, and still continues, the following methods and practices:

Respondent distributes to 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, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of the merchandise which he is offering for sale and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All the push cards used by respondent involve the same principle or sales plan or method but vary to some extent in detail. One of the said push cards bears 60 feminine names with ruled columns opposite each for writing in the name of the customer selecting such name. Said push card has 60 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names above referred to. 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 one large blue seal, concealed within each of which is one of the feminine names above referred to. The numbers concealed within each of the partially perforated disks cannot be ascertained until a push or selection has been made and the names concealed within the large red seal and large blue seal cannot be ascertained until these seals have been removed. The push card bears printed legends or instructions as follows:

RED	10 Numbers	
SEAL	are FREE	BLUE
	15—20—25	SEAL
	30—35—38—40	
	45—48—50	

Lucky Name under Red Seal receives
TWO Pairs

Ladies' Silk Hosiery
Lucky Name under Blue Seal receives
ONE Pair

Ladies' Silk Hosiery
NOTICE: IF MEN'S HOSIERY are
wanted we will send 3 Pair in place
of each pair of Ladies'

PAY ONLY WHAT YOU DRAW—1c to 15c

Any number over 15 pays only 15 cents

All numbers have Equal Chance

NO CREDIT

First write your name opposite name you
select, then push out with Pencil Point

The reverse of said card bears the following legend, among others:

Upon receipt of your order we will ship you, charges prepaid your choice of FIVE Pair of Ladies' Pure Silk Hosiery.

TWO pair are given you for disposing of the card. TWO pair given to the party drawing the lucky name found under the RED SEAL. ONE pair is given to the party drawing the lucky name found under the BLUE seal.

NOTICE: Regarding MEN'S HOSIERY. If Men's Hose are ordered we will send 3 Pair of Men's Pure Silk Sox in place of each pair of Ladies'.

If the order is sent us within ten days, we will include a SURPRISE GIFT for the person sending us the order.

All orders are shipped the same day received by Parcel Post or Express C. O. D. unless accompanied by POSTAL MONEY ORDER or CASHIER'S CHECK.

Do not credit for pushes; have them pay as they push. It is not necessary to return this card with the order blank.

Sales of silk hosiery by means of said push cards are made in accordance with the above-described legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer receives one or two pair of hosiery free or pays a sum of money from 1 cent to 15 cents therefor and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes two pair of ladies' hosiery or six pairs of men's hosiery to his representative making sales by means of said push card. Respondent also furnishes his representatives with additional printed instructions or suggestions for using said push cards.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. The members of the public, to whom respondent furnishes his push cards and other literature, use the same in the manner suggested by respondent, thereby distributing respondent's merchandise to others by lot or chance 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 his merchandise.

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

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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 his 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 his merchandise is prejudicial and injurious to the public and to respondent's competitors, and has resulted in the diversion of trade to respondent from his said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. As stated previously in these findings, the respondent sells his merchandise in practically all of the States of the United States and in the District of Columbia. While the annual volume of respondent's business was not shown exactly, the respondent testified and the Commission finds, that the respondent's annual volume of business is, and has been, substantial. The respondent testified that during 1936 he distributed between 10,000 and 20,000 push cards per month, having a total of approximately 150,000 push cards for that year, and that for the year 1935 his sales were in excess of \$100,000 and that for the year 1936 his gross sales were larger than for 1935.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of merchandise as described above, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, W. A. Leith, individually and trading as Style Silk 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, W. A. Leith, individually and trading as Style Silk Company, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of hosiery, 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 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

ALBERT J. TARRSON, INDIVIDUALLY AND TRADING AS
NATIONAL ADVERTISERS COMPANY, A. J. SALES &
MANUFACTURING COMPANY, THE TARRSON COMPANY,
AND PLA-PAL RADIO & TELEVISION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3081. Complaint, Mar. 18, 1937—Decision, Jan. 25, 1938*

Where an individual engaged in sale and distribution of clocks, cameras, radio receiving sets, pen and pencil sets, safety razors, 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 particular items of merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling said merchandise, by which chance purchaser paid for chance varying amount, dependent upon number disclosed within various disks of aforesaid cards, and received rotary clock (or camera, radio set, or other merchandise), or nothing, depending upon success or failure in selecting feminine name corresponding to that concealed under card's master seal, and he compensated by one or more items of merchandise operator or representative, and thereby placed in the 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 such 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 Albert J. Tarrson, individually and trading as the National Advertisers Company, the