

Complaint

IN THE MATTER OF

JOSEPH H. ROBINSON AND S. J. ROBINSON, TRADING AS
J. ARTHUR WARREN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3044. Complaint, Jan. 29, 1937—Decision, Jan. 27, 1938*

Where two partners engaged in sale and distribution of clocks, radios, vacuum cleaners, razors, and fountain pen sets, 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 merchandise thus being offered, and instructions, suggestions, and circulars describing their said plan of selling such 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 other articles or merchandise as aforesaid), or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under card's two master seals, and they 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 their said merchandise, with knowledge and intent that said cards had been, were, and would be used in sale and distribution of their 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 said partners 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 Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, hereinafter referred to as respondents, have been and

are 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. Respondents are individuals doing business as co-partners under the name and style of J. Arthur Warren Company, with their principal office and place of business located at 318 West Washington Street, in the city of Chicago, State of Illinois. They are now, and for more than 1 year last past have 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 cause and have caused said products when sold to be shipped from their 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 their business, respondents are now, and for more than 1 year last past have been in substantial competition with other individuals and with corporations 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 their business, as described above, respondents in soliciting the sale of and selling their products in interstate commerce have adopted and pursued and still maintain the following methods and practices:

Respondents distribute 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 respondents' plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the push card.

Respondents' push card bears 32 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has 32 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 each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has two large red partially perforated disks, and concealed within each of these two disks is one of the feminine names appearing elsewhere on the said

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card. The push card bears printed legends or instructions as follows:

2 WINNERS 2
RECEIVE
\$5.00 ROTARY CLOCKS
FOR 1¢ to 29¢

numbers from 1 to 29 pay what you draw, numbers over 29 pay only 29¢
write purchaser's name on back opposite name selected

INSTRUCTIONS: There are 32 mixed numbers in this card, printed from 1 upwards. Numbers under 29 pay what numbers call for. All numbers over 29 only pay 29¢. When card is completely sold, open large seals at top and Parties who selected the names which correspond with names under seals receive the ROTARY CLOCKS.

Sales of rotary clocks 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 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.

Respondents furnish one rotary clock and additional merchandise to their representative making sales by means of said push card. Respondents also furnish their representative with additional printed instructions or suggestions for using said push cards.

PAR. 3. Respondents in selling their said merchandise in connection with the aforesaid push card, conduct lotteries or place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

The sale of respondents' said merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondents' 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 respondents 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 respondents' sales method, as above described, and are thereby induced to purchase respondents' merchandise in preference to the same or similar merchandise of respondents' competitors who do not use the same or equivalent methods.

PAR. 4. The use of said method by respondents has the tendency and capacity unfairly to divert to respondents, because of said game of chance, trade, and custom from their 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 respondents 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 respondents 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 respondents are all to the injury and prejudice of the public and of respondents' 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 January 29, 1937, issued and served its complaint in this proceeding upon the respondents, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, charging them 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 respondents' 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 respondents, 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 respondents, Joseph H. Robinson and S. J. Robinson, are individuals doing business as copartners under the name and style of J. Arthur Warren Company, with their principal office and place of business located at 318 Washington Street in the city of Chicago, State of Illinois. Respondents are now, and for some time last past have been, engaged in the sale and distribution of clocks and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. They cause such merchandise, when sold, to be shipped or transported from their 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 in commerce by said respondents 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, respondents are, and have been, engaged in active competition with other partnerships and with individuals 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 their business as described in paragraph 1 above, respondents in soliciting the sale of and selling their merchandise have adopted and pursued, and still continue, the following methods and practices:

Respondents distribute 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 they are offering for sale and circulars explaining respondents' plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All of the push cards used by respondents involve the same principle or sales plan or method but vary to some extent in detail. One of the said push cards bears 32 feminine names with rule columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 32 small round partially perforated disks marked "PUSH," above each of which is printed one of the feminine names heretofore 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 two large red seals, 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 seals cannot be ascertained until the seals have been removed. The push card contains printed legends or instructions as follows:

2—WINNERS—2

Receive

\$5.00 Rotary Clocks

For 1c to 29c

Numbers from 1 to 29

Pay What You Draw,

Numbers Over 29 Pay

Only 29c

Write Purchaser's Name

on Back Opposite Name

Selected

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

INSTRUCTIONS: There are 32 mixed numbers in this card, printed from 1 upwards. Numbers under 29 pay what numbers call for. All numbers over 29 only pay 29c. When card is completely sold, open large seals at top and Parties who selected the names which correspond with names under seals receive the ROTARY CLOCKS.

Sales of rotary clocks by means of said push cards are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers 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.

In addition to the two clocks distributed to purchasers from the said push card, the respondents furnish one rotary clock and generally an additional item of merchandise to their representative making sales by means of said push card. Respondents also furnish their

representatives with additional printed instructions or suggestions for using said push cards. One of the said printed instructions bears the following legends, to wit:

HOW TO OBTAIN YOUR MODERNE ROTARY CLOCK FREE

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 1c to 29c, according to the number disclosed under the disc punched. For instance, if customer punches 1 he pays 1c. If 10 is punched, he donates 10c, or if 50 is punched, he pays only 29c. **NOTHING HIGHER THAN 29c—29c is maximum cost.** (Total \$8.60.)

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 is awarded 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 \$8.60 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, co-workers 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 girl's 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 push cards which respondents furnish are identical in principle but vary in detail. Some of said push cards are furnished by respondents and used by the public in purchasing and distributing radios, vacuum cleaners, razors, and fountain pen sets, and other merchandise sold and distributed by respondents. The members of the public, to whom respondents furnish their push cards and other literature, use the same in the manner suggested by respondents, thereby distributing respondents' merchandise to others by lot or chance and procuring respondents' merchandise for themselves. The sale and distribution of respondents' 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 respondents in furnishing said push cards put in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of their merchandise.

PAR. 3. The respondents, in furnishing said push cards, have knowledge that the same are, have been and will be, used in distributing their merchandise, and furnish said push cards so that their 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 respondents, who do not furnish push cards similar to those furnished by respondents, 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 respondents 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 respondents 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 respondents from their said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondents in the sale and distribution of their merchandise is prejudicial and injurious to the public and to respondents' competitors, and has resulted in the diversion of trade to respondents from their 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 respondents sell their merchandise in practically all of the States of the United States and in the District of Columbia. While the annual volume of respondents' business was not shown exactly, one of respondents testified, and the Commission finds, that the respondents' annual volume of business is, and has been, substantial. One of the respondents testified that from August 1936 to December 31, 1936, they distributed approximately 250,000 push cards and that their sales for the same period were approximately \$20,000.

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 respondents, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and

constitutes 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 respondents, 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 respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have 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 respondents, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of clocks, radios, vacuum cleaners, razors, fountain pen sets, 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 respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
THE BALL COMPANY, INCORPORATED

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

Docket 3293. Complaint, Jan. 4, 1938—Decision, Jan. 27, 1938

Where a corporation engaged as wholesale jeweler in sale of diamonds and diamond rings to purchasers at points in various other States, in substantial competition with others engaged in offer and sale of such products to dealers and members of the general public in commerce among the various States and in the District of Columbia, and including many competitors who do not misrepresent, as below set forth, their said products and basis of their guarantees—

Represented and implied, through certificates and guarantees given by it on sheets similar to those commonly used for security certificates, and featuring, in arrangement and type, words "Federal Trade Commission" as part of statement certifying that "diamond ring sold this day to ----- of ----- is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION" (together with picture of dome of Capitol above an eagle), that diamonds thus sold by it were in fact perfect in accordance with required Commission standard and had been inspected, found and certified as such by aforesaid Government agency, facts being Commission had neither fixed nor promulgated any standard for perfect or other diamonds, or inspected, found, or certified said or any other as perfect diamonds, and said statements, representations, and implications were deceptive, misleading, and false;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of its said diamonds and diamond rings by reason of erroneous and mistaken beliefs thus induced, and with result that substantial trade, as consequence thereof, was unfairly diverted to it from those of its said competitors who do not misrepresent their guarantees or aforesaid products; to the injury of competitors in commerce:

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

Mr. Wm. T. Chantland for the Commission.

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 The Ball Company, Incorporated, 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 Commis-