

IN THE MATTER OF

HENRY R. SHAPIRO, INDIVIDUALLY, AND TRADING AS
MONARCH FASHION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3018. Complaint, Feb. 25, 1937¹—Decision, Feb. 3, 1938*

Where an individual engaged in sale and distribution of hosiery, lingerie, men's shirts, tablecloths and napkins, and various other articles and items—

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 his said plan of selling such merchandise, 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 women's hosiery (or three or six pairs of men's, or other merchandise thus being offered and sold, as the case might be), or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under card's red and blue seals, respectively, and he compensated by similar 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 products, with knowledge and intent that said cards had been, were, and would be used in sale and distribution thereof 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 competitors was 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.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on December 21, 1936, 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,

¹ Amended and supplemental.

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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 Henry R. Shapiro, individually, and trading as Monarch Fashion 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. Respondent is an individual doing business under the name and style of Monarch Fashion Company, with his principal office and place of business located at 1414 South Wabash Avenue, 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, ladies' lingerie, men's shirts, tablecloths, napkins, bedspreads, pillows, blankets and comforters, silverware, and pen and pencil sets, 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 like 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 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 his merchandise and circulars explaining

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respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. 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 ten 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 cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push cards also have 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 names appearing elsewhere on said cards. The push cards bear printed legends or instructions, one of which is 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¢

NO HIGHER

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

The other push cards bear similar legends but vary in detail. Such variations cover the merchandise to be distributed, the price to be paid, and the number of pushes which are free. The said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card.

Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the legends contained on said push cards. The fact as to whether a customer receives specified merchandise free or pays a sum of money from 1 cent to 15 cents, or in other cases from 1 cent to 20 cents, and in still other cases from 1 cent to 25 cents, and the fact as to whether a customer receives nothing for the amount paid or receives certain specified merchandise, is thus determined wholly by lot or chance.

Respondent furnishes specified merchandise to his representatives making sales by means of said push cards. Respondent also furnishes his representatives 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 cards, 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 and ultimate consumers of respondent's merchandise 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 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.

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The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. The use of said method 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 his said competitors.

PAR. 6. 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 December 21, 1936, issued and served its complaint in this proceeding upon the respondent, Henry R. Shapiro, individually, and trading as Monarch Fashion Company; thereafter, on February 25, 1937, the Federal Trade Commission issued and served its amended and supplemental complaint in this proceeding upon the said respondent, 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 amended and supplemental complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said amended and supplemental complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by Morris Blank and John A. Nash, attorneys 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 amended and supplemental complaint, the answers thereto, testimony and other evidence, brief in support of the complaint (counsel for the respondent having failed to file any brief and having indicated their desire not to orally argue the matter); 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, Henry R. Shapiro, is an individual trading under the name and style, Monarch Fashion Company, with his principal office and place of business located at 1414 South Wabash Avenue in the city of Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of hosiery, ladies' lingerie, men's shirts, table cloths, table napkins, bedspreads, pillows, blankets, comforters, silverware, pen and pencil sets, 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.

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PAR. 2. In the course and conduct of his business as described in paragraph 1 above, respondent, in soliciting the sale of and selling 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 of the 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, advertisements containing illustrations of the merchandise which he is offering for sale, and circulars explaining respondent's plan of selling such merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All of the said 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 for writing in the name of the customer opposite the feminine name selected. Said push card has 60 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 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 and blue seals cannot be ascertained until the seals have been removed. The push card bears printed legends or instructions, among others, as follows:

	14 Numbers	
	are FREE	
Red	5-15-20-25	Blue
Seal	30-35-38-40	Seal
	45-48-50	
	55-58-60	

Lucky Name under Red Seal receives

TWO Pairs

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

* * * * *

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.

* * * * *

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

Sales of hosiery 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 from 1 cent to 15 cents for one or two pair of ladies' hosiery, or three or six pair of men's hosiery, or receives the same free of charge, 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 three pair of ladies' hosiery or nine pair of men's hosiery distributed to purchasers from said push card, the respondent furnishes two pair of ladies' hosiery or six pair of men's hosiery and generally an additional item of merchandise to his representative making sales by means of said push card. Respondent also furnished his representatives with additional printed instructions or suggestions for using said push cards. One of the said printed instructions bears the following legends, to wit:

Over each girl's name there is a concealed number. This number represents the amount each person pushing out the number is to pay.

The concealed numbers under the small seals range from Numbers 1 to 60 inclusive, but the customer pays only 1¢ to 15¢ per drawing, according to the number drawn, no higher. Any number over 15 pays only 15¢.

Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out number 5-15-20-25-

Persons pushing out number 5-15-20-25-30-35-38-40-45-48-50-55-58-60 are not to pay anything, as these numbers are FREE, but they have equal chance with the other numbers for winning the name shown under the large RED and BLUE SEALS.

After all the numbers have been pushed and collections made, the large RED and BLUE SEALS are pushed out, and the person holding the name corresponding to the one shown on the large RED SEAL is awarded FREE, TWO pairs of ladies' Silk Hose. Also ONE pair of Ladies' Silk Hose is awarded to the person pushing out the name corresponding to the one shown under the BLUE SEAL.

The person selling the card receives ABSOLUTELY FREE, their choice of TWO pairs of Ladies' Silk Hose for their efforts put forth in selling the card.

When payment is received for all the numbers sold on the card, the amount collected will be \$5.95, for which Cashier's Check or Money Order may be purchased and remitted with the order, or we will ship C. O. D.

We will then ship any FIVE pairs of Ladies' Hose of which TWO may be given to the holder of the lucky name shown under the large RED SEAL and one pair of Ladies' Silk Hose to the holder of the lucky name shown under the BLUE seal, and the other TWO given to the party that disposes of the card for their efforts. NOTE—If Men's Hose are ordered, we will send 3 pairs of Men's Silk Hose instead of Each Pair of Ladies'.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. Some of the said push cards are furnished by the respondent and used by the public in purchasing and distributing the other merchandise sold and distributed by respondent and heretofore referred to. 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 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 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.

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, the respondent having testified that his customers are located pretty generally throughout the United States. While the annual volume of respondent's business was not shown exactly, the respondent testified and the Commission finds, that for the period beginning January 1, 1936, and ending November 30, 1936, the respondent distributed approximately 207,000 push cards. The Commission further finds that his sales of merchandise are, and have been, substantial.

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 respondent, Henry R. Shapiro, individually and trading as Monarch Fashion 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 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, brief filed herein on behalf of counsel for the Commission (brief of respondent and oral argument having been waived), 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, Henry R. Shapiro, individually and trading as Monarch Fashion Company, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of hosiery, ladies' lingerie, men's shirts, tablecloths, table napkins, bedspreads, pillows, blankets, comforters, silverware, pen

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and pencil 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 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.

Syllabus

IN THE MATTER OF
UNIVERSITY FORUM, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3078. Complaint, July 29, 1937¹—Decision, Feb. 3, 1938*

Where a corporation engaged in sale and distribution of 20-volume and 12-volume sets of books, respectively designated as "University Forum Series" and "Effective Speech Series," and represented as respectively adapted for advancement of adult education and for self-advancement in effective speech-making; second organization engaged as National Association of Delta Theta Chi in conducting so-called sorority and in purchase for resale to so-called chapters thereof of aforesaid two series; individual engaged as owner of aforesaid two corporations in sale of said series and in promoting the organization and conduct of said so-called association and pretended sorority; and an individual engaged as self-styled grand secretary of said association and as agent of aforesaid owner individual and of aforesaid corporations in the sale of said series and in the conduct of said association or so-called sorority; in substantial competition, as thus engaged, in sale of their said books to purchasers in other States and in the District of Columbia with others likewise engaged in sale and distribution of encyclopedias, treatises, home study, and correspondence school courses adapted to and used for self-advancement through adult education in commerce among the various States and in the aforesaid District; in promoting the sale of aforesaid sets through their practice, directly and through their agents and representatives, of making contact in different cities for the establishment of a chapter of said association and securing the agreement of the prospective members, whom they entertained, to pay \$45.00 initiation or membership fee and other annual dues—

Represented, in aforesaid connection, that said association was a legitimate professional or business women's sorority, and that while prime purpose thereof was social, it had certain cultural aspects, and that to further said cultural aspects local chapter would be given two sets each of aforesaid two series, of which one of each was to remain at local chapter rooms or headquarters and one was to be placed in possession of local chapter's educational director, and that members of said national association or pretended sorority would receive instruction under direction of a university or college professor, facts being said so-called National Association of Delta Theta Chi was not a legitimate professional or business women's sorority, or sorority in any sense of the word, as generally understood, but outlet only for aforesaid publications, and no member thereof, as a result of such membership, ever received from college or university professor any form of instruction whatsoever, and representations in said respects were untrue; With result that members and prospective members of said National Association of Delta Theta Chi were led into erroneous and mistaken beliefs that they were joining legitimate sorority within general meaning of term, and would secure other benefits represented, and aforesaid corporations and individuals

¹ Amended.